IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1313

GATEWAY BOOKS, INC., MOD BOOKS, INC., DIXIE BOOKS, INC., PAPERBACK BOOKMART, U.B. INC., 45 8TH STREET CORPORATION, CARL SNYDER, JOE MANNING, JOHN MARTIN, MARK MASON, and AIRPORT BOOK STORE, INC.,

Petitioners,

v.

MAYNARD JACKSON, in his capacity as Mayor and BOB HAMER, Bureau Director of the Licensing Division, and LEE P. BROWN, in his capacity as Public Safety Commissioner of The City of Atlanta,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE GEORGIA SUPREME COURT

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INDEX

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

LAW REVIEW ARTICLES

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Petitioner respectfully prays that a writ of certiorari issue to review the opinion and judgment of the Supreme Court of Georgia entered in the above-styled action on September 6, 1978.

OPINION BELOW

The opinion of the Supreme Court of Georgia is not yet reported, but a copy thereof is set forth in Appendix A hereto. A copy of the Order denying Rehearing on September 27, 1979, is set forth in Appendix B hereto. The Order of the Circuit Justice Powell extending the time within which to file this Petition for Writ of Certiorari until February 23, 1979 is set forth in Appendix C hereto.

JURISDICTION

The Judgment of the Supreme Court of Georgia was entered on September 6, 1978. Thereafter, the Supreme Court of Georgia denied a Petition for Rehearing timely filed on September 26, 1978. Mr. Justice Powell granted an extension of time to and including February 23, 1979, within which to file this Petition. This Court's jurisdiction is invoked under *Title 28 United States Code § 1257(3).*

QUESTIONS PRESENTED

1. Do Plaintiffs have standing to challenge the City of Atlanta Adult Entertainment Ordinance for under inclusiveness, vagueness and for impermissible overbreadth where, as here, the First Amendment is involved?

2. Is the City of Atlanta Adult Entertainment Ordinance unconstitutional on its face and violative of the First Amendment because it conditions the expression of speech, that is the granting of a business license, on the absence of a conviction of a misdemeanor or felony relating to sex, alcohol, drugs, gambling or related matters, of the applicant?

3. Is the City of Atlanta Adult Entertainment Ordinance violative of the First, Fifth and Fourteenth Amendments in that it denies applicants convicted of a sex, alcohol, drug, gambling or related offenses the right to work, and the right to engage in a free speech activity?

4. Is the City of Atlanta Adult Entertainment Ordinance unconstitutional in that it requires applicants to disclose financial and other data protected by the First Amendment principles of anonymity?

5. Is the City of Atlanta Adult Entertainment License Ordinance unconstitutional because there is no compelling state interest which would justify the curtailment of the First Amendment, freedom of speech by denying applicants licenses predicated on the conviction of a crime relating to sex, alcohol, drugs, gambling or related matters?

6. Is the City of Atlanta Adult Entertainment Ordinance violative of the First Amendment and of the equal protection clause of the Fourteenth Amendment because it imposes requirements of financial disclosure and absence of conviction as conditions for granting of business licenses or a work permit?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution are set forth in Appendix D hereto.

STATEMENT

On January 17, 1977, the City Counsel of Atlanta, Georgia, adopted an Ordinance styled "AN ORDINANCE TO REQUIRE A PRIVILEGED LICENSE BEFORE DOING BUSINESS AS AN ADULT ENTERTAINMENT ESTABLISHMENT TO DEFINE ADULT ENTERTAINMENT: TO SET FORTH REQUIREMENTS FOR OBTAINING A PERMIT; TO PROVIDE A MECHANISM FOR REVOCATION OF THE PERMIT; TO REQUIRE EMPLOYEE PERMITS; TO REPEAL CONFLICTING ORDINANCES AND PARTS OF ORDINANCES, AND FOR OTHER PURPOSES."

Petitioners herein assert that the Ordinance is unconstitutional in the following particulars:

Section 4 (a) and its subdivisions mandates in essence that the applicant, partner, corporation officer or board member, or principal shareholder, file information and certificates relating to records of conviction, as well as financial information and records relating to "any bank accounts," [Section 4 (a) (6)] and any and "all real property" [Section 4 (a) (8)] presently leased or owned; Certified financial statements disclosing the source and application of funds invested in the business [Section 4 (a) (9)]; it further requires the disclosure by any corporate applicant to furnish the "names and addresses of the agents and employees of such corporation," [Section 4 (a) (10)] two (2) years prior to filing of the application; and minute documentation or oral and written agreements among the stockholders or partners or payment of rents" [Section 4 (a) (11)] so that the application of income derived from the business may be shown. The ordinance on its face and as applied is designed to compel disclosure of the principals of the City of Atlanta Adult Entertainment Ordinance.

Section 5 (a) provides that the Commissioner may refuse to issue or may revoke a license if the applicant or any partners, any corporation officers, or board members, or any principal shareholder has been convicted of a crime of moral turpitude or of a sex related, alcohol related, drug related, or gambling related misdemeanor or felony five (5) years prior to the filing of the application.

Thus, if there is a felony conviction relating to sex, alcohol, drugs, gambling or related offenses in Georgia or in reality anywhere in the United States by any applicant, partner, corporation officer or board member, or any principal shareholder, or any conviction of a misdemeanor relating to sex, alcohol, drugs, gambling or a variety of misdemeanors unrelated to the premises, then the Commissioner can deny a license or revoke the same if it has been issued.

Section 10 forbids the employment by any adult entertainment establishment of "any person in any capacity whatsoever" who has been convicted within five years of employment, of any felony or any misdemeanor relating to sex, alcohol, drugs, gambling, or of any offense involving moral turpitude, under any municipal ordinance, Georgia state law, or state law of any other state of the United States.

Section 11 of said Ordinance requires employees to obtain employee permits prior to employment in any adult entertainment estalishment, and Section 12 requires disclosure of the names and addresses of "any person having previously employed applicant," as well as disclosure of any convictions.

Section 15 (a) excludes employees from being granted a permit should they have been convicted of "any felony,

misdemeanor or ordinance violation involving sex related, alcohol related, or drug related offenses."

A copy of said Ordinance is attached hereto as Appendix E. Said Ordinance was approved by the Mayor of Atlanta on January 24, 1977.

Subsequent thereto, on April 11, 1977, Airport Bookstore, Inc. filed an action for declaratory and injunctive relief within three (3) months of adoption of the Ordinance alleging that Petitioner is in the business of operating adult bookstores and adult movie theaters. The Complaint named the Mayor and others as Defendants. The City of Atlanta Adult Entertainment Ordinance was challenged as being unconstitutional on the grounds set forth above. Petitioner alleged that its president had a felony conviction and, therefore, Petitioner and its president would be denied licenses under the Ordinance.

On June 7, 1977, a Motion to Intervene as Parties Plaintiff and Order for Intervention with proposed Complaint was filed on behalf of Gateway Books, Inc., Mod Books, Inc., Dixie Books, Inc., Paperback Bookmart, Inc., 106 Forsyth Street Corporation, MGT Corporation, Adult Bookmart, Inc., and 807 North Highland Corporation. Thereafter, on July 8, 1977, another Motion to Intervene as Parties Plaintiffs was filed on behalf of U.B. Inc. On June 29, 1977, said Motions of Applicants were granted. In addition, on November 17, 1977, a Motion to Intervene as Parties Plaintiff was filed by 45 Eighth Street Corporation amd individual Plaintiffs. Applicant 45 Eighth Street Corporation moved for intervention, alleging that it operates a business in the City of Atlanta, which would be classified as Adult Entertainment Establishment under the Ordinance which is attacked in the suit. Said business

had been duly licensed and operated under prior licensing ordinances of the City of Atlanta which did not discriminate against Adult Entertainment Establishments. The individual Plaintiffs applying for Intervention, Carl Schneider, Joe Manning, John Martin, and Mark Mason are employed at said location by 45 Eighth Street Corporation, and they attack the ordinance insofar as it would require them to obtain permits to work there. Thereafter, on December 5, 1977, the Superior Court of Fulton County also allowed these applicants to Intervene as Party Plaintiffs. Neither the original Petitioner nor any of the Intervenors is engaged in the business of operating an adult "cabaret" as defined in the Ordinance.

On January 23, 1978, the Superior Court of Fulton County held a hearing in which a police officer of the Atlanta Police Department testified that he made several arrests and had obtained some convictions involving certain bookstores. These arrests and convictions, it was made clear, did not involve the owners or employees of the bookstores. Thereafter, on February 13, 1978, the Superior Court of Fulton County entered an Order holding that the Ordinance approved by the Mayor of Atlanta on January 24, 1977, was not void for any constitutional grounds asserted, and dismissed the Complaint. Subsequent to this Order, on February 20, 1978, the Superior Court ordered that the enforcement of the City of Atlanta Adult Entertainment Licensing Ordinance be stayed conditioned upon the Plaintiff's prosecuting an immediate appeal.

Plaintiffs appealed the Judgment of the Superior Court of Fulton County to the Supreme Court of Georgia. Said Court affirmed the judgment of the trial court on September 6, 1978. The Supreme Court of Georgia subsequently denied a timely filed Motion for Rehearing on September 26, 1978.

All of the Plaintiffs are Adult Entertainment Establishment Corporations and/or employees of such corporations owning or leasing and operating business premises in Atlanta.

REASONS FOR GRANTING THE WRIT

I.

PLAINTIFFS HAVE STANDING TO CHALLENGE THE ATLANTA ADULT ENTERTAINMENT ORDINANCE FOR UNDER INCLUSIVENESS, VAGUENESS, AND FOR IMPERMISSIBLE OVERBREADTH BECAUSE THE FIRST AMENDMENT IS INVOLVED.

The Petitioners have not, as yet, applied for, and thus have never been denied a license, nor have they ever been subject to any sanctions of the City of Atlanta Adult Entertainment Establishment Ordinance. This, however, does not deprive them of standing.

This Court has held on many occasions that one does not have to apply for a license or file a license or permit application under a licensing statute or ordinance in order to challenge or resist the validity of the licensing statute or ordinance. *Freedman v. Maryland*, 380 U.S. 51, 56-67, (1965); *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 at 151 (1969); *Staub v. City of Baxley*, 355 U.S. 313 at 319 (1958); *Jones v. Opelika*, 316 U.S. 584, 602 (Stone, C.J. dissenting), adopted on rehearing, 319 U.S. 103, 104 (1941); *Schneider v. State*, 308 U.S. 147 at 159, 165 (1939); *414 Theatre Corporation v. Murphy, supra*, 360 F. Supp at 36 (1973).

In *Freedman v. Maryland*, this Court held:

> "In the area of freedom of expression it is *well established* that one has standing to challenge a statute on the ground that it delegates overly broad licensing discretion to an administrative office, whether or not his conduct could be proscribed by a properly drawn statute, and whether or not he applied for a license." (380 U.S. at 56, emphasis supplied.)

This Court continued by holding that that was true even though the person contesting the statute "may have had the license for the asking."

In *Shuttlesworth, supra*, with reference to *Shuttlesworth's* failure to file the permit application under the local ordinance, this Court asserted:

> " . . . And our decisions have made clear that a person faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right of free expression for which the law purports to require a license. 'The Constitution can hardly be thought to deny to one subjected to the restraint of such an ordinance the right to attack its constitutionality because he has not yielded to its demands.' Jones v. Opelika, 316 U.S. 584, 602, (Stone, C.J. dissenting), adopted per curiam on rehearing, 319 U.S. 103, 104 (394 U.S. at 151.)

In accordance with the foregoing authorities, Petitioners herein have standing to challenge the City of Atlanta Adult Entertainment Licensing Ordinance inasmuch as said Ordinance delegates overly broad licensing discretion to City of Atlanta officials.

This Court was confronted with a city ordinance prohibiting the showing of films containing nudity in *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975). In that case, the manager of a drive in theater brought a declaratory action alleging that the ordinance violated his first amendment rights. The trial court upheld the ordinance and this court reversed, holding that the ordinance in fact violated the First Amendment by being under inclusive and overbroad, and constituted an unconstitutional attempt to regulate expression.

An analysis of the City of Atlanta Adult Entertainment Licensing Ordinance demonstrates that the ordinance singles out adult entertainment establishments in that non-issuance of a license is conditioned on whether any of the applicants, corporate officers, shareholders, or board members have been convicted of a crime, misdemeanor or felony or moral turpitude, or relating to sex, alcohol, drugs, gambling or related offenses prior to application for a license. This Court observed:

> "By singling out movies containing even the most fleeting and innocent glimpses of nudity, the legislative classification is strikingly under inclusive." 422 U.S. at 215.

The same is the case herein. By singling out adult entertainment establishments and imposing on them licensing requirements not imposed on other businesses, the classification sought by the City of Atlanta Licensing Ordinance is

under inclusive, in that there is no basis for the distinction when analyzed by standards set forth in *Erznoznik, supra*, because it offers no justification for distinguishing between the requisites for obtaining a license imposed on adult entertainment establishments from other businesses.

At the same time, the City of Atlanta Adult Entertainment Licensing Ordinance is demonstrably overbroad in that it substantially deters Petitioners from the legitimate exercise of their First and Fourteenth Amendment rights. Such a deterrent, although it might not result in total suppression of the adult entertainment establishments, is a restraint on free speech. See *Speiser v. Randall*, 357 U.S. 513 at 518-519 (1958). This Court in *Stanley v. Georgia*, 194 U.S. 557 (1969) was called upon to review the conviction of a defendant for possession of 8 mm film reels alleged to be obscene, on appeal from the Supreme Court of Georgia. The films were found in a desk drawer in a bedroom of the defendant's home as a result of a search investigating defendant's alleged bookmaking activities. He was charged and convicted of possession of obscene material. This Court reversed his conviction, observing:

> "Roth and its progeny certainly do mean that the First and Fourteenth Amendments recognize a valid governmental interest in dealing with the problem of obscenity. But the assertion of that interest cannot, in every context, be insulated from all constitutional protection . . . . Roth and the cases following it discerned such an 'important interest' in the regulation of commercial distribution of obscene material. That holding cannot foreclose an examination of the constitutional implications of a statute forbidding mere private possession of such material." 394 U.S. at 563, 564.

The overbreadth of the statute at issue in *Stanley, supra*, was made evident in the opinion by Justice Marshall, expressing the view of six members of the Court, and holding that the Georgia statute, insofar as it made mere private possession of obscene matter a crime, was unconstitutional under the First and Fourteenth Amendments.

In *NAACP v. Button*, 371 U.S. 415 (1963) this Court made clear, that statutory vagueness cannot be tolerated when First Amendment considerations are involved in the following words:

> " . . . standards of permissible statutory vagueness are strict in the area of free expression . . . [for] the objectionable quality of vagueness and overbreadth does not depend upon absence of fair "notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter the exercise almost as potently as the actual application of sanctions. Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."

The vagueness and overbreadth of the City of Atlanta Adult Entertainment Licensing Ordinance can especially be found in the language of Section 4 (a) (7) ["Whether the applicant, or any partners, or any corporation officers or board

members, or any principal shareholders, have, within the preceding five (5) years, a record for any conviction for the violation of any statute of the several states, or of the United States, or of any ordinance of any city of the U.S."]; Section 5 (a) ["No license . . . shall be issued to any person . . . (who) shall have been convicted within five (5) years immediately prior to filing of said application for any felony or misdemeanor of any state or of the United States or any municipal ordinance involving a crime of moral turpitude or relating to sexual offenses and related matters, to alcohol or drug offenses and related matters, or to gambling offenses and related matters"]. The Mayor of the City of Atlanta, under this ordinance, would be given unbridled discretion to determine "related matters" to the offenses enumerated, and in determing whether a particular offense is of moral turpitude dimensions, in the state of Georgia, or anywhere in the United States. It is painfully obvious, that the City of Atlanta Adult Entertainment Licensing Ordinance, by its overbreadth, its vagueness, and at the same time its under inclusiveness, seeks to prevent adult entertainment establishments from operating *ab initio*, thus effectively curtailing the exercise of freedom of speech. This action on the part of the City of Atlanta is wholly inconsistent with the philosophy of the First and Fourteenth Amendments to the United States Constitution.

II.

THE CITY OF ATLANTA ADULT ENTERTAINMENT ORDINANCE IS UNCONSTITUTIONAL ON ITS FACE AND VIOLATES THE FIRST AMENDMENT BECAUSE IT CONDITIONS THE EXPRESSION OF SPEECH, THAT IS, THE GRANTING OF A BUSINESS LICENSE, ON THE ABSENCE OF A CONVICTION OF A MISDEMEANOR OR OF A FELONY RELATING TO SEX, ALCOHOL, DRUGS, GAMBLING OR RELATED MATTERS OF THE APPLICANT.

The Ordinance here involved provides for licensing of adult entertainment establishments, adult bookstores, adult motion picture theatres and adult cabarets. The Plaintiffs herein are all operators, lessors or employees of adult bookstores, adult motion picture theatres, and adult mini-motion picture theatres, and are not involved in the distribution of alcoholic beverages or in the operation of adult cabarets. Section 4(a) of the Ordinance mandates disclosure of bank accounts, real property, certified financial statements disclosing source and application of funds, agreements of partners or stockholders relating to division of profits, and a myriad of other confidential data which other businesses are not required to disclose. Section 5(a) provides as grounds for non-issuance of a license, that if the applicant, or any partners, or any corporation officers or board members, or any principal shareholder has been convicted of any misdemeanor or of a felony relating to sex, alcohol, drugs, gambling or related offenses, or of an offense involving moral turpitude, five (5) years prior to the filing of the application, the Mayor can deny a license. Thus, if there is any felony conviction or a conviction of a misdemeanor relating to the areas enumerated above in Georgia

or in reality anywhere in the United States by any applicant, partner, corporation officer or board member, or any principal shareholder unrelated to the premises, then the Mayor can deny a license or revoke the same if it has been issued. The denial or revocation of a license operates as a complete prior restraint. Even civil disabilities, including the loss of the right to vote, which occurs from felony convictions have never included the restraint upon the former felon's right to speak, to sell books or exercise any other First Amendment right.

This is precisely the prior restraint which has been held unconstitutional in *Near v. Minnesota*, 283 U. S. 262 (1932).

There are numerous cases which have dealt with the constitutionality of statutes purporting to restrain the exercise of free speech. Most recently, in *Universal Amusement Company, Inc. v. Vance*, 587 F.2d 159 (5th Cir., 1978). Texas statutes relating to obscenity were challenged. When construed together, these statutes provided that an establishment could be adjudged a nuisance and be closed for one (1) year; that the use of any premises for the commercial manufacturing, distribution or exhibition of obscene material constituted a public nuisance. The Court of Appeals for the Fifth Circuit held the ordinance inapplicable to obscenity insofar as it authorized injunctions against the future exhibition of unnamed films, and because it lacked required procedural safeguards. The Court observed:

> "Application of the one-year closing provisions in obscenity cases under the Texas nuisance statutes would constitute an impermissible prior restraint, since the state would be 'enjoin[ing] the future operation of a [business] which di-seminates presumptively First Amendment protected materials

> solely on the basis of the nature of the materials which were sold . . . in the past . . . . Many courts have so held." 587 F.2d at 167.

As in this case, the City of Atlanta Adult Entertainment Licensing Ordinance in effect seeks to enjoin the operation of adult entertainment establishments and it amounts therefore to an unconstitutional prior restraint, in that it would foreclose any sale of presumptively protected material by *ab initio* imposing conditions for issuance of a license which are virtually impossible to comply with.

Another recent decision directly on point in the Court of Appeals for the Fifth Circuit is *Bayou Landing, Ltd. v. Watts*, 563 F. 2d 1172 (5th Cir. 1977). In this case, the owners of adult bookstores brought civil rights actions against city officials to recover damage for the revocation of an occupational license and the withholding of a permanent occupancy permit. The United States District Court for the Middle District of Louisiana dismissed the actions and the Court of Appeals reversed and remanded. The Court held in essence that withholding an occupancy permit on the basis of public distaste for certain activities could not be justified as zoning ordinance, and neither could it be justified on general police power grounds, nor on the basis of the city's interest in regulating the content, rather than the form of the communication. The Court observed:

> "The standards would permit the government to suppress protected expression solely because the residents of the community disapproved of the contents of the expression or were offended by it. We also note that it was stipulated by the parties

> that 'other establishments in the area selling the same type material were given occupancy certificates and are in fact doing business in the City of Baton Rouge. There has been no explanation, in the zoning context, why the plaintiff business was singled out for unique treatment." 563 F.2d at 1175, 1176.

The Court of Appeals for the Fifth Circuit then held that an ordinance that sought to regulate adult bookstores, under the guise of general police power, is unconstitutional on the grounds that the restriction imposed is greater than necessary or essential for the protection of governmental interest.

The Georgia Supreme Court was also called upon to decide the constitutionality of an ordinance similar to the City of Atlanta Adult Entertainment Licensing Ordinance in *Coleman v. Bradford*, 238 Ga. 505, 233 S.E. 2d 764 (1977). The Ordinance in the *Coleman* case purported to regulate the licensing and operation of businesses, including motion picture theaters which specialized in "adult entertainment". The Court held the ordinance unconstitutional, stating:

> "We think the effect of the ordinance is to inhibit and chill the showing of admittedly nonobscene motion pictures. We reach this conclusion because of the numerous, extensive, and imprecise licensing standards and the high license fee charged for these theaters in contrast to other theaters showing non-obscene films. When these factors are considered with the heavy penalties for violations, our conclusion is inescapable. This ordinance can be used as a device whereby non-obscene, but perhaps offensive

> and distasteful, films may be suppressed without resort to the obscenity statutes. Our Bill of Rights will not permit this to be done. Cf. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 83 S. Ct. 631, 9 L. Ed 2d 584 (1963).

There is no question but that the disseminations of books and magazines, and the showing of movies, albeit sexually oriented, is presumptively protected expression and thus falls squarely within the First Amendment, where such material is not obscene. *Roth v. U.S.*, 354 U.S. 476 (1957); *Ginzburg v. U.S.*, 383 U.S. 463 (1966); *Mishkin v. New York*, 383 U.S. 502 (1966); *Heller v. New York*, 413 U.S. 483 (1973); *Roeden v. Kentucky*, 406 U.S. 905, (1972).

Thus, state statutes and ordinances designed to regulate sexually oriented materials must be carefully limited. See *Interstate Circuit, Inc., v. Dallas*, 390 U.S. 676 (1968). Further, it is a well established principle that where the First Amendment is involved, the usual presumption of constitutionality does *not* prevail. In *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. at 558 (1975), a licensing case which reiterates the correct presumption, this Court observed, citing several prior definitions:

> "Any system of prior restraint, however, 'comes to this Court bearing a heavy presumption against its constitutional validity.' *Bantam Books, Inc. v. Sullivan*, 372 U.S. at 70, 9 L. Ed. 2d 584; *New York Times Co. v. United States*, 403 U.S. at 714, 29 L.Ed 2d 82; *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419, 29 L.Ed 2d 1, 91 S. Ct. 1575

> (1971); *Carrol v. Princess Anne*, 393 U.S. 175, 181, 21 L. Ed 2d 325, 89 S. Ct. 347 (1968); *Near v. Minnesota*, ex rel. Olson, 283 U.S., at 716, 75 L. Ed 1357." (420 U.S. at 558, 43 L. Ed 2d at 459).

Expounding the philosophy deeply etched into the American legal system, this Court continued:

> "The presumption against prior restraints is heavier - and the degree of protection broader - than that against limits on expression imposed by criminal pnealties. Behind the distinction is a theory deeply etched in our law; a free society prefers to punish the few who abuse rights of speech *after* they break the law than to throttle them and all others beforehand. It is always difficult to know in advance what an individual will say, and the line between legitimate and illegitimate speech is often so finely drawn that the risks of freewheeling censorship are formidable. See *Speiser v. Randall*, 357 U.S. 513, 2 L. Ed 2d 1460, 78 S. Ct. 1332 (1958)." (420 U.S. at 559, 43 L. Ed at 459).

It should be also emphasized that Mr. Justice White in his dissenting opinion (concurred in by the Chief Justice) went out of his way to state agreement with the foregoing and other principles of prior cases.

Mr. Justice White stated:

> "The Court's understanding of our prior cases is unexceptionable . . . 420 U.S. at 565.

Thus, the *Southeastern* case involved (a) a licensing case; (b) a licensing ordinance by the City of Chattanooga; (c) the licensing of its municipally-owned theatre. Every Justice (except Justice Rehnquist) expressed unqualified agreement with the general principles upon which the Petitioners herein rely.

Southeastern (420 U.S. at 552) also cites and relies on a series of other decisions by this Court dealing with licensing ordinances including *Shuttlesworth v. City of Burmingham*, 394 U.S. 147, 150-151, (1969); *Staub v. City of Baxley*, 355 U.S. 313, 322, (1958); *Schneider v. State*, 308 U.S. 147, 161-162, (1939) for two (2) other closely related principles in that:

> "all (of the foregoing cases), however, had this in common: They gave public officials the power to deny the use of a forum in advance of actual expression." (420 U.S. at 553).

And,

> "It (*Shuttlesworth*) ruled that 'a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite, standards to guide the licensing authority, is unconstitutional." 420 U.S. at 553 (parentheses supplied.)

A myriad of other cases support the holding that denial of a license based on broad discretion by city officials is unconstitutional. Thus, in *Schneider v. State*, 308 U.S. 147 (1939), a local ordinance giving local officials the power to

deny a license to distribute circulars depending upon the applicant's good character was held void. In *Gelling v. Texas*, 343 U.S. 960 (1952) a city ordinance licensing films by the standards "of such character as to be prejudicial to the best interests of the people of said city" was held void. In *Staub v. City of Baxley, supra*, a local ordinance made it an offense to solicit membership in any organization without receiving a "permit" from the City Council. The permit could be refused by the Mayor and City Council after considering "the character of the applicant . . . and its effects upon the general welfare of citizens of the City of Baxley." It was held void.

Southeastern stated that the presumption against prior restraint is *heavier where civil* (i.e., licensing and state injunction statutes are involved) *as opposed to* cases where criminal sanctions are involved because a free society prefers to punish for offending speech after it occurs and it "is always difficult to know in advance what an individual will say . . ." (420 U.S. at 559, 43 L. Ed 2d at 459). The preceding statement is but a different way of expressing the principles embodied in *Near v. Minnesota*, 283 U.S. 697 (1931), and repeatedly applied by this Supreme Court, e.g., *New York Times Co. v. United States*, 403 U.S. 713 (1971); *Organization for a Better Austin v. Keefe*, 402 U. S. 415, (1971). That most basic principle is simple. Past misconduct, even criminal conduct, may not be the basis for restraining future publications.

There is one last general principle which must be set forth and which is not open to question. It is also but another phase or application of *Near v. Minnesota, supra*. When the exercise of First Amendment rights are involved, the governmental purpose cannot be achieved by means that sweep too broadly where there are less drastic means. *Shelton v. Tucker*,

364 U.S. 479 at 488, 490 (1960); *Zwickler v. Koota*, 389 U.S. 241 at 250, (1967); *Aptheker v. Secretary of State*, 378 U.S. 500 at 508, (1964); *Zwickler v. Koota*, 290 F. Supp. 244 at 257 (E.D.N.Y. 1968) (3 judge court, Zwickler II); *Police Department of the City of Chicago v. Mosely*, 408 U.S. 92 at 101, (1972).

In *People v. Mitchell*, 346 N.Y.S. 2d 495 (1973) the criminal court held invalid the predecessor ordinance requiring a license for places of amusement housing "peep show" machines. Addressing itself to that licensing ordinance Mitchell said:

> "In *Zwickler v. Koota*, 389 U.S. 241, 250, 88 S.Ct. 391, 396, 19 L. Ed 2d 444 (1969), the Court, in citing *NAACP v. Alabama*, 377 U.S. 288, 84 S. Ct. 1302, 12 L. Ed 2d 325 (1964), declared that 'a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.' 104, 92 S. Ct. 2294, 33 L. Ed 2d 222 (1972)." (346 N.Y.S. 2d at 498.)

For the foregoing reasons, the City of Atlanta Adult Entertainment Licensing Ordinance is unconstitutional.

III.

THE ATLANTA ADULT ENTERTAINMENT ORDINANCE IS VIOLATIVE OF THE FIRST, FIFTH AND FOURTEENTH AMENDMENTS IN THAT IT DENIES APPLICANTS CONVICTED OF ANY SEX RELATED, ALCOHOL RELATED OR DRUG RELATED OFFENSE THE RIGHT TO WORK, AND THE RIGHT TO ENGAGE IN A FREE SPEECH ACTIVITY.

There is no question that the denial of a license or work permit as it were, is a denial of a type of "new property" the consequences of which constitute a deprivation of the applicant's source of income. "The New Property," THE YALE LAW JOURNAL, Vol. 73-735 (1964). "The right to work, either in employment or independent business, is fundamental and, no doubt, enjoys the protection of the personal liberty guarantee of the Fourteenth Amendment to the federal constitution, as well as the most specific provisions of our state Constitution." *Bautista v. Jones*, 155 P. 2d 343 (1945). See also *Terrace v. Thompson*, 263 U.S. 197 (1923); New York Ice Co. v. Leibmann, 285 U.S. 262 (1932); *Traux v. Raich*, 239 U.S. 33 (1915).

Given that the right to work is a fundamental right, and that the bookstores, adult theatres, and adult establishments are legal businesses, a person has the fundamental right to work in such places even though he has been convicted of a previous crime. This right cannot be summarily denied, and the five (5) year limitation is arbitrary, capricious, and irrational and therefore, violates due process of law and has a "chilling effect" on First Amendment freedoms.

The City of Atlanta's denial of a permit to applicants who seek employment at Adult Entertainment Establishments directly contravenes the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Applicants who are denied a permit and/or a license are simultaneously denied (a) the right to work and (b) the right to freedom of expression.

Section 10 of the Ordinance here in question forbids the employment by any adult entertainment establishment of "any person in any capacity whatsoever" who have been convicted within five (5) years of employment of any felony or any misdemeanor relating to sex, alcohol, drugs, gambling or related offenses, or of any offense involving moral turpitude under any municipal ordinance, Georgia state law, or state law of any other state in the United States. A copy of the personal history record form required to be filled out by each applicant is attached hereto as Appendix F.

Section 11 of said Ordinance requires employees to obtain employee permits prior to employment in any adult entertainment establishment, and Section 12 requires disclosure of the name and address of "any person having previously employed applicant," as well as of any previous convictions. Section 15 (a) excludes employees from being granted a permit should they have been convicted of "any felony, misdemeanor or ordinance violation involving sex related, alcohol related or drug related offenses," or any offense involving moral turpitude.

Thus, the Mayor's discretion is unbridled, in that he may deny a license to *any* applicant, any partner, any corporate officer, any board member or any principal shareholder if the applicant has been convicted of any misdemeanor or felony relating to sex, alcohol, drugs, gambling or related offenses.

Furthermore, the Mayor may deny a permit to any employee applicant in the event that any of them have been convicted of *any* misdemeanor, or *any* felony in Georgia or in *any* other state in the United States, or of any municipal ordinance violation, involving sex related, alcohol related, or drug related offenses. The vagueness of the language of "related offenses" as it appears in Section 15 (a) is readily apparent.

It is uncontestable that the Ordinance gives the Commissioner the power to refuse or reserve a license and thereby prevent the dissemination of expression of all sexually oriented materials in the future because of one misdemeanor or felony conviction anywhere in the United States.

The Ordinance thus establishes a clear prior restraint upon the dissemination of expression in violation of *Near v. Minnesota*, 283 U.S. 697 (1931). This Court's principle set forth in *Near v. Minnesota, supra*, has been followed by Courts across the nation where the latter excluded "any person who has been convicted of a crime." An ordinance very much like the ordinance at issue here was involved in the case of *Natco Theatre, Inc. v. Bruce Ratner, et al*, 78 5391, U.S.D.C., S.D. New York. The opinion by the United States District Court for the Southern District of New York dated January 12, 1979, shows that the ordinance in the *Natco* case gave the Commissioner of the Department of Consumer Affairs the authority to deny, suspend or revoke a license upon the finding that the applicant had failed to satisfy the ordinance's disclosure provision and, if any of the applicants, the business's principals, or any shareholders were previously convicted of a crime. With respect to the First Amendment rights involved the Court noted:

> "A regulatory scheme under which a license necessary to the exercise of First Amendment rights may be denied or revoked because of past convictions for any felony (and for certain misdemeanors), constitutes prior restraint. Such a scheme is constitutionally suspect and subject to the closest scrutiny." At page 9 of the opinion.

In addition, the Court held the disclosure provisions of the ordinance too broad to be upheld and declared it unconsititutional. It should be pointed out here that the Court in *Natco, supra*, relied heavily on *Perrine v. The Municipal Court*, 97 Ca. Reptr. 320, 488 P. 2d 648, at 653 (S. Ct. of Cal. en banc 1971); *Seattle v. Bittner*, 81 Wash. 2d 747, 505 P.2d 126 at 131 (S. Ct. Wash. en banc 1971); and on *Alexander v. City of St. Paul* 227 N.W. 2d 370 at 373 (S. Ct. Minn. 1975), discussed below, in arriving at its holding that a system of prior restraint based upon past conviction as herein, cannot be sustained where there is no clear and present danger.

Likewise, in *Haft v. Gragson, et al.*, Civ. LV-2116, in an opinion dated January 7, 1974, the United States District Court for the District of Nevada held a similar ordinance unconstitutional because of disclosure requirements setting forth all persons financially interested in the business and disclosure of the entire inventory of the business. Analyzing the ordinance according to principles set forth in *Dorchy v. Kansas*, 264 U.S. 286 (1924), the Court held the ordinance in question unconstitutional in *toto* because the objectionable disclosure provisions could not be deemed separable from the rest of the provisions of the ordinance. Similarly, in *People v. Taub*, 37 NY 2d 530 at 534, 375, NYS 2d 303 at 307 (1974) the Court held unconstitutional an ordinance of the City of

Buffalo which provided that a permit for the use of a loudspeaker on the street should not be issued to any person who "has been convicted of a crime" (37 NY 2d at 534, 375 NYS 2d at 307).

Taub held:

> "Denial of a permit on such grounds constitutes not only a classic instance of impermissible overbreadth but also a prior restraint on freedom of speech." (37 NY at 534, 375 NYS 2d at 307).

The principle is directly applicable where a Commissioner may deny a license because of a conviction for a crime. This is the precise holding of the cases set forth below.

The ordinance here parallels virtually identical licensing ordinances of other cities which on this very basis have been held unconstitutional in the highest courts of the States of California, Washington and Minnesota. *Perrine v. The Municipal Court*, 97 Ca. Reptr. 320, 488 P. 2d 648, at 653 (S. Ct. of Cal. en banc. 1971); *Seattle v. Bittner*, 81 Wash. 2d 747, 505 P. 2d 126 at 131 (S. Ct. Wash. en banc 1973) *Alexander v. City of St. Paul*, 227 NW 2d 370 (S. Ct. Minn. 1975); *7939 Biscayne Boulevard Corporation v. Ferre*, U.S.D.C. S. Dist. Florida Case No. 77-7333-Civ. (WHM); see also *Avon 42nd Street Corp. v. Myerson, 352* F. Supp. at 998; *Oregon Bookmark Corporation v. Schrunck*, 321 F. Supp 639) D. Ct. Oregon 1970); *Broadway Distributors, Inc. v. White*, 307 F. Supp 1180 (D. Mass 1970).

In *Perrine*, the Supreme Court of California en banc considered a Los Angeles County ordinance licensing book

stores. It parallels in major respect the City of Atlanta Adult Entertainment Ordinance here involved. It stated that the Commission may grant a license if it finds that the operation will be carried on at a location or in a building or structure which complies with the health, zoning, fire and safety requirements of the State of California and ordinances of the County of Los Angeles.

It further provided in a separate subdivision that a license can be granted if the applicant, its partners, directors or officers have not been convicted of any of the enumerated crimes. Mr. Perrine's 1969 license application was denied because of a 1968 obscenity conviction (488 P. 2d at 650). The court first held that the ordinance did not contain definitive objective guidelines and hence was unconstitutional (488 P. 2d 650-651). (emphasis supplied).

The Supreme Court of California further observed that:

> *"even if the ordinance limited its disqualifications (for a license) to applicants or co-participants who had been convicted of one or more of the enumerated crimes . . . it would nevertheless be invalid."* (488 P. 2d at 652). (emphasis supplied).

Since the business of selling books requires no special expertise, such as a lawyer or doctor, or school teacher whose "past criminal convictions are often directly related to their occupational qualifications and may therefore be reasonably invoked to bar them from practicing their professions" (488 P. 2d at 652), that Court asserted:

> "the ordinance's broad exclusion for past criminal convictions goes far beyond any constitutionally permitted restriciton on the right to engage in a lawful occupation or business." (488 P. 2d at 652).

Relying on *Near v. Minnesota, supra*, 283 U.S. 697, at 751, and the most basic principle of prior restraints set forth above, the Court also observed:

> "Moreover, since a denial of a license would prohibit petitioner from engaging in an activity protected by the First Amendment, it could only be justified, even under a narrowly drawn ordinance, if permitting a person who had been convicted of a crime involving obscenity to operate a bookstore constituted a clear and present danger of a serious substantive evil . . . (citations omitted) . No such clear and present danger appears. We cannot assume that because petitioner was once convicted of violating Penal Code Section 311.2, he will violate it again, or that if he does so, criminal sanctions will not afford an adequate remedy. (See, *Near v. Minnesota, supra*, 283 U.S. 697, 715, 51 S. Ct. 75 O. Ed 1357)." (488 P. 2d at 653).

Perrine, in holding directly on point, concluded:

> "To interpret the ordinance in this case to permit denial of a license because of a past conviction of violating Penal Code Section 311.2 would do more than create a hazard to protected freedoms; it would suppress them altogether. The penalty for violating section 311.2 does not include a forfeiture of First Amendment rights, and the risk

> that criminal sanctions will be insufficient to deter future violations of that section cannot justify the county's attempted forfeiture of those rights on the *theory that past violators are unfit to operate bookstores.*" (488 P. 2d at 653).

Seattle v. Bittner, supra, involved a Seattle ordinance licensing motion picture theatre. That ordinance, similar to the City of Atlanta Adult Entertainment Licensing Ordinance, provided that if an individual applicant or a corporate applicant or any of its officers had been convicted within ten years of any felony or misdemeanor involving moral turpitude or intent to defraud, a theatre license could not be granted. The City of Seattle contended that a person who had been convicted of the offense of exhibiting an obscene film was more likely than not to commit the offense again, that the imposition of criminal penalties did not have either a deterrent or rehabilitative effect, and hence it was necessary to enact the licensing laws.

The Court, in an en banc decision, said:

> "Whether or not this assumption has any validity, we are convinced that the *Constitution does not permit a licensing agency to deny to any citizen the right to exercise any of his fundamental freedoms on the ground that he has abused that freedom in the past. No case is cited which supports such a proposition and our research has revealed none.*" 505 P. 2d at 131, (emphasis supplied).

The Court then quoted Professor Emerson's Yale Law School analysis of prior restraint relying heavily on the basic prior restraint of *Near v. Minnesota, supra*, and concluded that:

> ". . . (the licensing ordinance) is not a permissible form of prior restraint."

It should also be observed that the Washington Supreme Court sitting en banc quoted extensively from and relied upon the *Perrine* California Supreme Court en banc decision.

A similar ordinance was the subject of the decision of the Supreme Court of Minnesota in *Alexander v. The City of St. Paul*, 227 N.W. 2d 380 (1975). The ordinance of the City of St. Paul provided that a motion picture theatre license could properly be refused or rescinded if the licensee or owner, manager, etc. had been convicted of the exhibition of obscene material relative to the operation of the motion picture theatre (227 N.W. 2d at 371). The Minnesota court summarized the Plaintiff's contention as follows:

> "Plaintiff's primary contention is that the action of the City of St. Paul revoking his license to operate a motion picture theatre because of a past conviction relating to obscenity, whether of plaintiff or one of his employees, is an unlawful prior restraint of expression protected by the First Amendment. We agree. As a result, it will not be necessary to reach other arguments raised by Plaintiff." (227 N.W. 2d at 372).

That Court, also relying on the classic prior restraint doctrine of *Near v. Minnesota*, held:

> "The standard for license revocation under St. Paul Legislative Code, §372.04 (g) a past conviction relating to obscenity, attempts to accomplish the same purpose as the statute struck down in *Near*. Section

372.04(g) denies plaintiff the right to exercise a constitutionally protected right because of a past abuse of that right.

"The remedy presently available to the City of St. Paul for plaintiff's past abuses lies not in the suppression of the right to show all films, but in criminal prosecutions for violations of constitutional obscenity laws. The risk that criminal sanctions will be insufficient to deter future violations of the ordinance cannot justify the city's attempt to revoke plaintiff's license in the face of his right to the free speech guaranty of the First Amendment." (227 N.W. 2d at 373).

We note that the Supreme Court of Minnesota also cited and relied on the *Perrine* case.

Florida Courts have also been called upon to determine the constitutionality of ordinances, similar to the City of Atlanta Adult Entertainment Establishment Ordinance herein. Thus, in *Bayside Enterprises Inc. v. Carson, et. al,* 450 F. Supp. 696 (M.D. Fla. 1978), the operators of adult entertainment establishments sought declaratory and injunctive relief alleging the unconstitutionality of a city ordinance that sought to regulate adult entertainment and services. The ordinance mandated residency requirements for obtaining licenses to operate adult establishments and required "good moral character" of the applicants to be determined by the sheriff as basis for granting or denying a license. Furthermore, it mandated a five year ban on the operation of an adult bookstore or movie house in the case of any person who had been convicted of a specified criminal act. The United States District Court for the Middle District of Florida observed in this respect:

"The provision of the Adult Entertainment Code proscribing the issuance of licenses to those applicants who are not, in the opinion of the Sheriff, 'of good moral character' is no more definite or specific than the ordinances involved in the cases just cited. As in those cases, the effect of the Code's good moral character criterion is to allow the Sheriff to deny a license to whomever he pleases and to legitimatize that action through reference to a criterion which is so imprecise as to be virtually unreviewable. Accordingly, the Court hereby finds this particular provision unconstitutional." 450 F. Supp. at 461.

The Court also struck down the residency requirement as unconstitutional. While recognizing questions of constitutional significance by the prohibition of issuing adult entertainment licenses to "any person convicted of a criminal act within five years" the Court did not address that particular issue.

In *7939 Biscayne Boulevard Corporation v. Ferre*, U.S. D.C. So. Dist. Fla. Case No. 77-7333 Civ. - WHM, the City of Miami on February 23, 1978, enacted an adult theatre and adult bookstore licensing ordinance No. 8578 (Ch. 66 of the Code of the City of Miami, Florida). That licensing ordinance provided, inter alia, that the qualifications for obtaining a theatre license should turn upon the good character of the applicant. It required a statement of whether the applicant or any stockholder, director, or partner of the applicant had been convicted in Florida, or any other state for prostitution, narcotics offenses or obscenity.

The plaintiff was refused a license and closed for prior convictions. The plaintiff contended that the standards were in reality no standards at all and that the right to revoke or deny a license based upon past convictions for narcotics or prostitution violated the First Amendment as well as the due process and equal protection clauses of the Fourteenth Amendment. The United States District Court agreed and granted a preliminary injunction against the enforcement of the City of Miami Licensing Ordinance No. 8758.

In *Avon 42nd Street Corp. v. Myerson*, 352 F. Supp. 994 (S.D. N.Y. 1972) the United States District Court for the Southern District of New York considered a licensing ordinance relating to licensing of motion picture theaters. The ordinance mandated that the commissioner could suspend or revoke a license upon determination of the moral character of the applicant, and that an investigation be called for reporting of any offense against morality, decency and public welfare, committed at exhibitions. The Court held that although the motion picture operator had plead guilty on one occasion to disorderly conduct arising out of a showing of an allegedly obscene motion picture, the ordinance provisions nevertheless constituted an invalid prior restraint on the right of expression and was unconstitutional. The Court observed in this respect:

> "To permit the suspension of operation of a theatre on the basis of a prior conviction even for obscenity, amounts to an unconstitutional suppression of protected freedoms of expression." (352 F. Supp. at 998).

Where even the violation of obscenity laws in the premises cannot serve as a basis for denying or revoking a license, how

much so is the instant ordinance an unconstitutional prior restraint where it authorizes the denial or revocation of a license for prior criminal activity unrelated to the premises and even unrelated to the type of activity to be carried on at the premises.

The statutory command to the Mayor to judge the "health and general welfare of the City of Atlanta" by considering past criminal convictions constitutes a delegation to him of the power to effect an unconstitutional prior restraint and establishes the clear unconstitutionality of the ordinance.

Firstly, as set forth above, an ordinance which conditions the grant of a license to exercise First Amendment rights on an administrative official's determination of the health and genuine welfare of the City of Atlanta as to applicants is constitutionally impermissible and void. *Gelling v. Texas*, 343 U.S. 960 (1952); *Staub v. City of Baxley, supra*, 335 U.S. at 321, 322 (1958).

In addition, the ordinance runs afoul of the basic rule that a law subjecting the exercise of First Amendment freedoms is impermissible unless there are narrow, objective and definite standards to guide the licensing authority. *Shuttlesworth, supra; Southeastern Promotions, supra; Theatre Corp. v. Murphy*, 499 F. 2d at 1159, all supra. One of the standards for assessing "health and general welfare of the City of Atlanta" consists of the right of the Mayor to deny a license for past criminal convictions. Aside from establishing an unconstitutional standard, it sets forth no standard at all, much less narrow, objective or definite. This simply gives the Mayor the right to do as he chooses if there is any conviction.

For the foregoing reasons the City of Atlanta Adult Entertainment Licensing Ordinance giving the Mayor the right to deny a license to exercise First Amendment rights because of past convictions of an offense involving moral turpitude and for violation of sex related, drug related, alcohol related, and gambling related offenses is unconstitutional.

IV.

THE CITY OF ATLANTA ADULT ENTERTAINMENT LICENSING ORDINANCE IS UNCONSTITUTIONAL IN THAT IT REQUIRES APPLICANTS TO DISCLOSE FINANCIAL AND OTHER DATA PROTECTED BY THE FIRST AMENDMENT PRINCIPLE OF ANONYMITY.

Section 4 (a) and its subdivisions mandates that the applicant, partner, corporation officer, board member, or principal shareholder file information and certificates relating to records of conviction, as well as financial information and records relating to "any bank accounts, [Section 4 (a) (6)]; and any and "all real property" [Section 4 (a) (8)] presently leased or owned; certified financial statements disclosing the source and application of funds invested in the business [Section 4 (a) (9)]; it further requires the disclosure by any corporate applicant to furnish the "names and addresses of the agents and employees of such corporation" [Section 4 (a) (10)] two (2) years prior to filing of the application; and minute documentation of oral and written agreements among the stockholders or partners relating to "division of profits, sharing of revenues or payment of rents" [Section 4 (a) (11)]; so that the application of income derived from the business may be shown. The ordinance on its face and

as applied is designed to compel disclosure of the principals of the Adult Entertainment Establishments. This Court has held time and time again, that the First Amendment right to publish, distribute and exhibit and the First Amendment associational right protects the anonymity of publishers, distributors, exhibitors and their stockholders and principals from inquiry as to their identity. Thus, in *Talley v. California*, 362 U.S. 60, at 64-65 (1960) an ordinance prohibiting distribution of handbills without name and address of the printer and distributor was held void by this Court. To this same effect, See *NAACP v. Alabama*, 357 U.S. 449, at 462, (1958), (disclosure of membership list "effective restraint on freedom of association"); *Gibson v. Florida Legis. Inv. Committee, supra*, 372 U.S. 539, (1973) (communist infiltration; membership list protected, government's burden to show substantial interest and nexus not met). Other Courts across the nation have followed this court's ruling. Thus, in *Bursey v. United States*, 466 F. 2d 1059 at 1084 - 1086, (9th Cir. 1972) in a Grand Jury investigation, the Court of Appeals for the Ninth Circuit protected the anonymity of publishers, distributors and printers holding this anonimity to be an integral part of press freedom. See also *People v. Mishkin*, 17 A. D. 2d 243, N.Y.S. 2d 342 (1st Dep't 1962), aff'd 15 N.Y. 2d 671, 255 N.Y.S. 2d 881 (1964), (Statute requiring name and address of publisher or printer held invalid); *American Federation of Government Employees v. Schlesinger*, 443 F. Supp. 431 (D.C.D. of Col. 1978), (Part B. Dep't of Energy Questionnaire to Employees name all corps. with which employee is connected as officer, director, held invalid); *Zwickler v. Koota*, 290 F. Supp 244 (E.D. N.Y. 1968 - 3 judge court), (New York handbill law prohibiting statement concerning candidate for election without the name and address of printer held invalid); *Matter of Figari v. New York Tel. Co.*, 32 A.D. 2d 434, 303

N.Y. 2 2d 545 (2nd Dep't 1969), (Let Freedom Ring, Incorporated, corporate petitioner, disseminated anti-socialist telephone tape recordings anonymously, Telephone Company regulations requiring statement of name and address invalid - anonymity protected); *Jordan v. Hutcheson*, 323 F. 2d 597 at 606 (4th Cir. 1973), (Legislative Committee Investigation; legal ethics champerty guise of investigation may not override First Amendment); *People v. Duryea*, 351 N.Y.S. 2d 978 at 991, (S. Ct. NY), (Political handbill law requiring name and address held overbroad); *Maguin v. Miller*, 433 F. Supp. 223 at 228, 230 (D.C. Kan 1977), (Police seizure of film; police enjoined from compelling patrons to divulge names and addresses).

Bursey involved a federal jury investigation into the Black Panthers and a threat to kill the President of the United States, kidnapping, assault, and interference with the armed forces (466 F. 2d at 1065-1066). The witnesses refused to answer certain questions and were held in contempt (466 F. 2d at 1071). The Circuit Court reversed.

The Court first dealt with grand jury questions addressed to Bursey and Presley about the identity of persons responsible for the publication (466 F.2d at 1085). Bursey quoted extensively from *Talley, supra*, which had pointed out that anonymity of publishers and distributors was an important part of the First Amendment and that "even the Federalist Papers*** were published under fictitious names." (*Talley*, 362 U.S. at 62-65, quoted in *Bursey*, 466 F. 2d at 1085.

Bursey held that inquiries about the identity of persons responsible for editorial content and distribution and persons

associated with the newspaper violated both the First Amendment right to print and distribute as well as the First Amendment right of associational privacy. The Court of Appeals for the Ninth Circuit observed:

> "Questions about the identity of persons who were responsible for the editorial content and distribution of a newspaper and pamphlets (*Bursey* questions 1-21; *Presley* questions 1-14) cut deeply into press freedoms. Two basic ingredients of press freedoms are liberty to decide what to print and to distribute what is printed. (466 F. 2d at 1084, 1085, emphasis supplied)."

In addition, the Court asserted:

> "Protection of the anonymity of publishers, printers, and distributors of newspapers and pamphlets is an integral part of press freedom. (466 F. 2d at 1085)."

With reference to First Amendment associational freedoms, *Bursey* relied on *NAACP* and *Gibson* and *Shelton*, the opinion of the Court of Appeals deserves extensive quotation:

> "Inquiries about the identity of persons with whom the witnesses were associated on the newspaper and in the Black Panther Party (*Bursey* questions 1-24; *Presley* questions 1-14, 27-31) infringed the right of associational privacy. The chilling effect of compulsory disclosure of one's association in political activity has been repeatedly recognized. . . .
>
> *Into the next category fall questions that probed the publication and distribution of the Black Panther's newspaper and pamphlets* (*Bursey* questions

1-16; *Presley* questions 1-14). *These questions infringed both associational privacy and press freedom, but the deepest cuts, were into press freedom.* (466 F. 2d at 1087, emphasis supplied).

In *NAACP, supra*, the State of Alabama attempted to compel the NAACP to deliver its membership list to determine whether the petitioner, NAACP, was conducting an interstate business in violation of Alabama's foreign corporation registration statutes (357 U.S. at 451, 453, 464). This Court observed with respect to desclosure requirements:

> "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights were involved***. 357 U.S. at 462.

The NAACP cannot function without members. This Court in *NAACP* stated the perfectly obvious, that compelled disclosure of the membership might destroy the association and that "inviolability of privacy" was indispensable (357 U.S. at 462). *Gibson, supra*, approving *NAACP*, came to the same conclusion in the context of a legislative inquiry, namely, that the privacy of the membership list was an associational right protected by the First Amendment (372 U.S. at 544). *Shelton, supra*, held that the First Amendment must protect a teacher from disclosing his every associational tie (364 U.S. at 485, 486).

The conclusion here urged is supported by *People v. Mishkin*, 234 NYS 2d 343, aff'd 15 NY 2d 671, 255 NYS 2d 881 (1964); *Zwickler v. Koota, supra, Figari, supra*, and *Duryea, supra*.

Mishkin was convicted of publishing obscene publications. He was also convicted of 32 violations of the General Business Law for failure to print the name and address of the printer or publisher on the material. The Appellate Division relying on *Talley* held the General Business Law unconstitutional on its face (234 NYS 2d at 343). The Court of Appeals affirmed. If the state legislature *cannot* compel the disclosure of the name and address of the publisher, the City *cannot* do so either, under the guise of a licensing law.

In addition, the ordinance here involved goes much further than merely requiring that the names and addresses of the stockholders and principals be divulged.

As stated, Section 4(a) conditions the grant of the license upon the principals furnishing to the Bureau of Police Services of the City of Atlanta complete financial information and records, concerning the source of the funds used or intended to be used by an individual.

A financial statement is part of the license application required for the applicant to comply with Section 4(a) (9, 10, 11) of the City of Atlanta Adult Entertainment Licensing Ordinance attached hereto as Appendix G. When read in conjunction with the form for application for a license to operate an adult entertainment establishment attached hereto as Appendix H, it is clear that each applicant whether stockholder, corporation officer or partner, and board member, is required

to be disclosed and the corresponding percent of their ownership in the corporation or any affiliate subsidiary; their ownership of stocks, and bonds; their ownership of titles of any fixed assets; their ownership of the business; and many secured obligations of each such person. This information is required pursuant to the letter accompanying said forms, and attached hereto as Appendix I.

In addition each of these individuals must set forth every share of stock in every company owned by them. Thus, for example, if a principal owned a stock interest in a publishing house, or a motion picture distribution company or bookstore, he would have to list those securities. Hence, the principal's anonymity is lost not only for the particular premises involved but also in connection with all of his other enterprises exercising First Amendment rights.

There is no protection against the Bureau of Police Services of the City of Atlanta turning over the records to other City or Federal governmental agencies. In any event, the confidentiality from public disclosure (assuming arguendo there is such confidentiality) is irrelevant as a matter of law. *Shelton v. Tucker, supra*, 364 U.S. at 486, *Bursey, supra*, 466 F.2d at 1086.

Shelton held that the fact that the information might be kept confidential was irrelevant. The Court said:

> "Even if there were no disclosure to the general public, the pressure upon a teacher to avoid any ties which might displease those who control his professional destiny would be constant and heavy." (364 U.S. at 486).

Similarly, in *Bursey, supra*, 466 F. 2d at 1086, the Court held that the secrecy of the grand jury proceedings "did *little to soften the blow to the First Amendment rights.*" (Emphasis added). The Court pointed out that while the public did not hear the information, the proceedings were no secret to the government and that dissidents would have more to fear about the disclosure to the government than anyone else (466 F. 2d at 1086).

For this additional reason, the ordinance on its face as amplified by the application of information required thereunder violates First Amendment principles of anonymity.

V.

THE CITY OF ATLANTA ADULT ENTERTAINMENT LICENSE ORDINANCE IS UNCONSTITUTIONAL BECUASE THERE IS NO COMPELLING STATE INTEREST WHICH WOULD JUSTIFY THE CURTAILMENT OF THE FIRST AMENDMENT FREEDOM OF EXPRESSION, BY DENYING APPLICANTS A LICENSE PREDICATED ON THE CONVICTION OF A CRIME RELATING TO SEX, ALCOHOL, DRUGS, GAMBLING OR RELATED OFFENSES.

This Court has set forth that the burden is upon the government to show a compelling state interest and a substantial relationship between that interest and the information sought. The State is also required to show that it has used the least drastic means. In addition, even where the state interest is substantial, the inquiry cannot sweep too broadly. *Gibson*, 372 U.S. at 546 (1963); *Bursey, supra; Jordan, supra; and Shelton, supra.*

In *Gibson*, this Court said:

> " * * * it is an essential prerequisite to the validity of an investigation which intrudes into the area of constitutionally protected rights of speech, press, association, and petition that the state convincingly shows a substantial relationship between the information sought and a subject of overriding and compelling state interest." 373 U.S. at 546.

Bursey stated the rule as follows:

> "When governmental activity collides with First Amendment rights, the government has the burden of establishing that its interests are legitimate and compelling and that the incidental infringement upon First Amendment rights is no greater than is essential to vindicate its subordinating interest." 466 F. 2d at 1083.

Shelton assumed that the state had a substantial interest in inquiring "into the fitness and competence of its teachers." Even where the governmental interest is substantial, that purpose cannot be achieved where there are less intrusive means available (364 U.S. at 488, 490).

The doctrine of least intrusive or less drastic is a doctrine which runs throughout the First Amendment. It has been applied in innumerable different situations to hold a statute unconstitutional on its face or as applied. *United States v. Robel*, 389 U.S. 258 (1967) (unlawful for any member of a Communist-action organization to be employed in any defense facility; held overbroad); *Aptheker v. Secretary of State, supra,*

378 U.S. at 508 (1964) (Subversive Activities Control Act, where a Communist organization ordered to register, unlawful for a member to make application for a passport; held overbroad); *Zwickler v. Koota, supra*, 290 F. Supp at 257 (3-judge court), (Zwickler II); *Police Department of Chicago v. Mosely*, 408 U.S. 92 at 101 (1972); *Show-World Center, Inc. v. Walsh, supra*, 438 F. Supp at 652 (1977) (acts of administrative officials).

Zwickler quoted and relief on *United States v. Robel, supra*, as follows:

> "In summation, 'when legitimate legislative concerns are expressed in a statute which imposes a substantial burden on protected First Amendment activities, Congress must achieve its goal by means which have a 'less drastic' impact on the continued vitality of First Amendment freedoms.' (Citing cases)." 290 F. Supp at 257.

Where as applied to the Plaintiffs herein, the Twenty-First Amendment is not involved, since none of the Plaintiffs distribute alcoholic beverages, the State cannot be said to have the extra authority which permits restriction of speech. *California v. LaRue*, 409 U.S. 109 (1972) and thus there cannot conceivably be a compelling state interest which would justify the state's interference with the First Amendment rights of Plaintiffs herein. This Court has held in *Doran v. Salem Inn, Inc.*, 422 U.S. 922 at 932 (1974) as to two (2) plaintiffs, in a unanimous decision that whatever the state's power may be in the regulation of the sale of liquor even the customary

"bar room" type of nude dancing is entitled to First Amendment protection even though it might involve only the "barest minimum of protected expression."

There is no compelling state interest as regards the Plaintiffs herein, which would justify requiring applicants, partners, corporation officers, board members, and/or principal shareholders or employees operating premises where sexually oriented books and magazines are distributed to divulge their identity and all other assets, including ownership of real estate, bank accounts, and investment of profits in other enterprises. This Court will readily agree that such is not necessary for any physical safety, health or welfare of the inhabitants of the City of Atlanta.

VI.

THE CITY OF ATLANTA ADULT ENTERTAINMENT ORDINANCE IS VIOLATIVE OF THE FIRST AMENDMENT AND OF THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT BECAUSE IT IMPOSES REQUIREMENTS OF FINANCIAL DISCLOSURE AND ABSENCE OF CONVICTION AS CONDITIONS FOR GRANTING OF A BUSINESS LICENSE OR A WORK PERMIT.

The State's power in making classifications is well established. See *Levy v. Louisiana*, 391 U.S. 68 (1969); *Ferguson v. Skrupa*, 372 U.S. 726, 732. (1963).

However, this Court has noted that a State:

> "may not draw a line which constitutes an invidious discrimination against a particular class."

Skinner v. Oklahoma, 316 U.S. 535 (1942)

Where there is only a remote relationship to a statute's purpose and a closed class is created by a statute singling out particular groups, a deprivation of equal protection of the law occurs. *Morey v. Doud*, 354 U.S. 457 (1957). Thus, while the state has the power to classify in the adoption of police laws, the classification must be reasonable and cannot be arbitrary.

As this Court has observed in *Butler v. Michigan*, 352 U.S. 380 (1957), such legislation must be "reasonably restricted to the evil with which it is supposed to deal." The present

ordinance is not such legislation. It is not aimed directly at the real evil. It seeks to accomplish its end by the imposition of restrictions which are of doubtful utilization for the accomplishment of its purpose and which in any event seeks to impose on plaintiffs a prior restraint on the conduct of their businesses so far as they are constitutionally protected. It seeks not only to deter plaintiffs from activity which the state statute can constitutionally forbid, but also from activity which the First Amendment protects. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963).

A further burden, not imposed on other businesses presently, and which has a deterrent effect on the exercise of the First Amendment rights and also violates the equal protection clause, is found in the requirement that any applicant, partner, corporate officer, board member or shareholder must show the source of their funds and disclose how they invest any profits derived from the business.

There are numerous categories of entities in Georgia which must be licensed. They include bowling alleys, shooting galleries, miniature golf courses, sidewalk cafes, public carts, auctioneers, garages and parking lots.

Except possibly for operators of games of chance, the only categories of those required to be licensed who must fill out the onerous and detailed provisions of the financial disclosure form showing the source of the funds to be used are those engaged in the dissemination of expression presumptively protected by the First Amendment, such as adult bookstores, and movie theatres.

The disclosure requirements for games of chance which are in reality mandated by the State Constitution can in no way be

equated with the requirement of disclosure of the names and addresses of stockholders and directors of those exercising First Amendment rights.

The foregoing demonstrates that the ordinance on its face and as applied violates the equal protection clause. In that regard obviously the exercise of a First Amendment right is a fundamental right. *Salem Inn, Inc. v. Frank*, 522 F. 2d 1045 at 1049 (Ca 2 1975) (*Salem II*).

Where a fundamental right is involved, differences in classification are subject to strict scrutiny and, much on the same line as the anonymity test, are justified only when necessary to promote some compelling state interests. *Shapiro v. Thompson*, 394 U.S. 618 (1968); *Salem Inn, Inc., supra*, 522 2d at 1059. We do not perceive how there can be any compelling state interest which would justify requiring the corporate employer and operator to divulge, as a condition of doing business, the identity of the stockholders, board members, officers, etc., while there is no requirement that a retail store selling such non First Amendment material as automobile accessories, or ties, or clothes, or persons purchasing parcels of real property, make such disclosure.

The denial of a license to Adult Entertainment Establishments on the basis of the applicant's having any prior sex related, alcohol related, or drug related conviction unrelated to the premises constitues a denial of equal protection and in violation of Petitioner's First and Fourteenth Amendment rights, in that there is no nexus between a conviction of a sex, alcohol, or drug related misdemeanor or felony and the occupation for which an applicant seeks a license.

It is alleged that illegal activity is supposed to occur on the premises of Adult Entertainment Establishments by patrons frequenting these Establishments, and that arrests of patrons have been made, The Supreme Court of California was confronted with an identical situation in *Tarbox v. Board of Supervisors*, 329 P.2d 553 (Ca. 1958). In that case, the city claimed the theater was a public nuisance, but the Court held that the refusal to renew the theater's business license was error. As herein, officers in the *Tarbox* case testified in a hearing as to numerous arrests made of customers in darkened areas in adult entertainment establishments. Subsequent to that hearing, the city refuse to grant a license. Because the Supreme Court of California's observations are directly on point here, they deserve a full quotation:

> "It is not asserted that [the applicant] countenanced, consented to or in any wise permitted any lewd or immoral acts upon the premises. It cannot be said, therefore, that the business conducted by him constituted a public nuisance although it may be that the acts of those who gained lawful entrance to the theater might be detrimental to those of the public who observe them. . . . It is their acts which were seemingly beyond the control of either the police or petitioner which were detrimental to the public interest, not the operation of a motion picture theater. *The fact that a motion picture theater, being a darkened place, provides opportunity* for these persons to assert their unnatural proclivities *is true of every theater*, motion picture or legitimate [business] *or of any other place to which the public is admitted* and which through the nature of the business transacted therein, is darkened; and *if, because the*

> *condition permits performance of some lewd act*, this makes the place a public nuisance, *then all such places are public nuisances. To so hold would be absurd*." 329 P.2d at 556 (Emphasis added)

The same would hold true in the instant case. Patrons legally enter an adult entertainment establishment and some go to the back where it is dark, enter a booth, and then allegedly violate the law. It is literally impossible to police an area since the booths can be closed and even locked, and there is but one clerk in such an establishment who must watch the cash register and the rest of the store. The City of Atlanta Adult Entertainment Licensing ordinance does not prevent this conduct and it is not related to controlling or preventing this type of activity. The ordinance assumes that individuals who have committed sex, drug, alcohol or gambling related crimes, must be banned for five (5) years from employment or ownership. This Court has astutely observed in *Stanley v. Georgia, supra:*

> "George asserts that exposure to obscene material may lead to deviant sexual behavior or crimes of sexual violence. There appears to be little basis for that assertion. . .Given the present state of knowledge, the State may no more prohibit possession of chemistry books on the ground that they may lead to manufacture of home made spirits." 394 U.S. at 568.

A wealth of authority, as related above, indicates that a person may not be denied a license, and be thus deprived of a livelihood, for a previous conviction of a crime. In fact, this Court has similarly held in *Miller v. Carter* ___ U.S. ___,

98 S. Ct. 786 (1978). This Court in *Miller* in an equally divided opinion affirmed the holding of the United States Court of Appeals, for the Seventh Circuit, 547 F.2d 1314 (1977), striking down a city of Chicago Ordinance which barred persons convicted previously of a felony, from obtaining a public chauffeur's license. The United States Court of Appeals had held that the ordinance violated equal protection and was therefore unconstitutional.

The language of the City of Atlanta Adult Entertainment Ordinance would permit the City to refuse to allow a person to run and operate a bookstore or theater or employ a person if he/she was convicted of possession of less than one ounce marijuana or driving under the influence of alcohol, both being misdemeanors. The language of the Ordinance is clearly overbroad, in that it permits non-issuance of a license based on offenses that are not even remotely related to the operation of an adult entertainment establishment. In *Atlanta Attractions, Inc. v Massell*, 330 F. Supp 865 motion for reh. denied, 332 F. Supp 914 (ND Ga. 1971), aff'd on other grounds, 463 F.2d 449 (5th Cir. 1972) the District Court for the Northern District of Georgia, held that "the clause in. . . . § 5-48. . . which states that 'due cause' for the revocation of a liquor license shall consist of the violation of any state law is overbroad and unconstitutional". 332 F. Supp at 915.

The City of Atlanta Entertainment Licensing Ordinance is likewise unconstitutional because it is overbroad in including all offenses relating to sex, alcohol, drugs or gambling.

In *Broadway Distributors, Inc. v. White*, 307 F. Supp 1180 (Mass 1970), a city ordinance required persons operating shops for the barter, rental or sale of printed matter to register and

affix registration numbers to subject materials. The ordinance denied the right to register to anyone convicted of violating specified obscenity statutes, and further required that the applicants identify all persons having a financial interest in his business and all suppliers of printed matter and motion picture films. The United States District Court for the District of Massachussetts struck down the ordinance as invalid on its face and as impermissible prior restraint. It is readily apparent that the disclosure requirements and the requirement of absence of conviction as condition for registration in *Broadway Distributors, Inc., supra*, are virtually identical to the requirements in the City of Atlanta Adult Entertainment Licensing Ordinance, and these requirements have been held overbroad and in violation of the First and Fourteenth Amendments.

The Atlanta Adult Entertainment Licensing Ordinance imposes requirements of disclosure not imposed on businesses in Georgia generally. Moreover, the Ordinance sets forth requirements which have a deterrent effect on the free exercise of First Amendment rights which cannot be justified without a substantial showing of the necessity for such restrictions. *Tally v. California*, 362 U.S. 60 (1960); *Bates v. City of Little Rock*, 361 U.S. 516 (1960); *NAACP v. Alabama, supra*. The discrimination resulting from the requirements of the City of Atlanta Adult Entertainment Licensing Ordinance is of the "unusual character" which

> "especially suggests careful consideration to determine whether [it is] obnoxious to the constitutional provisions."

Louisville Gas and Electric Co. v. Coleman, 277 U.S. 32 (1927); *Hartford S.B. Ins. Co. v. Harrisson*, 301 U.S. 459 (1937).

This is so especially because there is no presumption of legislative validity where First Amendment freedoms are involved, *Erznoznik v. City of Jacksonville, supra*, and also, because the Twenty-First Amendment does not apply to give the state or city the extra authority which permits restriction of speech in bars, since none of the Plaintiffs are involved in the distribution of alcoholic beverages. *California v. LaRue*, 409 U.S. 109 (1972).

The conclusion must be that the Ordinance on its face and in all its parts is an invalid prior restraint on the rights of the Petitioners under the First Amendment as made applicable by the Fourteenth Amendment.

CONCLUSION

For the foregoing reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Georgia Supreme Court.

Respectfully submitted

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APPENDIX A

In the Supreme Court of Georgia

Decided: September 6, 1978

33792. AIRPORT BOOK STORE, INC., et al.
v. JACKSON, MAYOR et al.

HILL, Justice.

In January, 1977, the Atlanta City Council adopted and the Mayor approved an ordinance to require licensing of certain sex related businesses. The ordinance uses the phrase "adult entertainment establishments" both generically and technically. Section 1 of the ordinance states that its purpose is, among other things, to provide standards for licensing adult entertainment establishments.

The ordinance then provides for licensing of five types of businesses: adult entertainment establishments, adult bookstores, adult motion picture theaters, adult mini motion picture theaters, and adult cabarets. These five categories of businesses are defined technically as set out in the footnote.[1]

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[1] "(1) *ADULT ENTERTAINMENT ESTABLISHMENT*-any building or structure which contains, or is used for commercial entertainment, whether a place where musical entertainment is carried out consisting of a series of unrelated episodes and dances, all with the purpose of depicting or suggesting sex-centered subjects or objects or a place where the patron is charged a fee to dance or view a series of dance routines, strip

The ordinance lists a dozen pieces of information, financial and otherwise, which must be furnished by the license applicant, including any further information that may be required by the license examining bureau.

The ordinance specifies as ground for denial of a license that no license or renewal license shall be issued to any applicant which has as owner, partner, officer or principal shareholder a person convicted within 5 years "for any felony or

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[1] (continued)

performances or other gyrational choreography provided by the establishment that depicts or suggests sex-centered subjects or objects. Nothing herein defined shall in any way or form legitimize any activity prohibited by State law or City Ordinance.

"(2) *ADULT BOOK STORE*-an establishment, having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals which are destinguished or characterized by their emphasis on matter depicting, describing or relating to nudity or sexual conduct. As used within this section 'nudity' means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the depiction of covered male genitals in a discernibly turgid state, and 'sexual conduct' means acts of masturbation, homosexuality, sodomy, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be female, breast.

"(3) *ADULT MOTION PICTURE THEATRE*-an enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to 'nudity' and 'sexual conduct,' as heretofore defined under this chapter, for observation by patrons therein.

misdemeanor of any state or of the United States or any municipal ordinance involving a crime of moral turpitude or relating to sexual offenses and related matters, to alcohol or drug offenses and related matters, or to gambling offenses and related matters."[2]

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[1] (continued)

"(4) *ADULT MINI MOTION PICTURE THEATRE*-an enclosed building with a capacity for less than 50 persons, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to nudity or sexual conduct. As used within this section 'nudity' means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering or the depiction of covered male genitals in a discernibly turgid state, and 'sexual conduct' means acts of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be female, breast, or an enclosure wherein coin or slug-operated, or electrically, electronically or mechanically controlled adult amusement machines are maintained or where mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to depict nudity or sexual conduct, as heretofore defined.

"(5) *ADULT CABARET*-a cabaret which features go-go dancers, exotic dancers, strip dancers or other similar entertainers, dancers or employees."

[2] The other grounds for denial of a license are that the application contains a material omission or untrue information, the zoning, fire or building codes would be violated, or the applicant has had a license issued under the city's police power revoked or suspended.

The ordinance prohibits employment by licensees of persons who have within the preceding 5 years been convicted of these same offenses (except gambling). It requires that licensees' employees have permits and prohibits the issuance of such permits to persons who have within 5 years "been convicted of any felony, misdemeanor or ordinance violation involving sex related, alcohol related or drug related offenses."

The ordinance prescribes a $500 investigation fee. Although not in issue now, whether this same fee would be payable upon application for renewal of the annual license is unclear.

The ordinance provides that a license may be revoked "for cause", after notification and hearing. It contains prohibitions upon employing minors and upon permitting them to frequent adult entertainment establishments as customers. It requires existing adult entertainment establishments to obtain licenses within 6 months and it contains a severability clause.

Airport Book Store, Inc., filed suit for declaratory judgment within 3 months of adoption of the ordinance alleging that petitioner is in the business of operating adult bookstores and adult movie theaters. The complaint named the Mayor and others as defendants. The ordinance was challenged as being unconstitutional on the grounds set out in the footnote.[3]

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[3] "That the aforementioned ordinance is unconstitutional and illegal on the following grounds:

a) Said ordinance on its face is vague, indefinite and overbroad so as to violate the due process clauses of the Georgia and United States Constitutions and to invite discriminatory application, in violation of the equal protection clauses of said

Petitioner alleged that its president had a felony conviction and therefore petitioner and its president would be denied licenses under the ordinance. (The paragraph containing this allegation was denied by the defendants.)

Interventions were allowed on behalf of Gateway Books, Inc., and others engaged in operating adult bookstores and

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[3] (continued)

constitutions. Georgia Constitution, Art. 1, Sec. I, para. III (2 Ga. Code § 103), para. II (2 Ga. Code § 102), United States Constitution, Fifth and Fourteenth Amendments (1 Ga. Code §§ 805, 815), and further violates the First Amendment of the United States Constitution (1 Ga. Code 801-815), and the Georgia Constitution (Code 2-115, Constitution of 1945), Art. I, Sec. I, para. 15, in denying the Plaintiff the right of expression and speech; all in violation of the due process clause and amounts to a prior restraint.

b) That section 4 through section 16 of said ordinance discriminates against adult bookstores and adult theatres by requiring the following: a substantial amount of financial information; no record for any conviction for five years, investigation by the Bureau of Police; with a fee of Five Hundred ($500) Dollars; a hearing must be had; the mayor in Section 7 has unbridled discretion to renew a permit; and all other requirements while other bookstores and theatres do not have to comply with said ordinance, which makes said ordinance discriminatory and violates the equal protection clause; all in violation of the constitutional rights mentioned in subparagraph (a).

adult theaters, as well as Yield, Inc., d/b/a Harem Bathhouse, Cheshire Cat Bathhouse and Blue Fox Bathhouse, which alleged that it was engaged in operating adult entertainment establishments. See *Yield, Inc. v. City of Atlanta*, #33476, decided June 30, 1978. The intervenors asserted the same rights as had the original petitioner.

Neither the original petitioner nor any of the intervenors is engaged in the business of operating an "adult cabaret" as defined in the ordinance. In fact, the definition in the ordinance explains only the meaning of the word "adult", not the meaning of "cabaret". We understand that the word "cabaret"

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[3] (continued)

c) That the classification of adult theaters and bookstores for said licensing requirements amounts to a prior restraint and are in violation of the Constitutional rights set out in paragraph (a).

d) The ordinance lacks standards for the issuance of a license. In Section 4, subsection 12: "and any further information that may be required," is too vague, overbroad, and indefinite to be enforceable, and cannot be complied with; all in violation of the constitutional rights mentioned in subparagraph (a).

e) That the requirements set out in said ordinance such as no prior convictions, their bank accounts, financial statements, and other information, etc. is an impermissible distinction between 'adult oriented' and other bookstores, and there is no rational basis for said distinction; all in violation of the constitutional rights set out in subparagraph (a).

f) That the ordinance is an attempt to regulate materials which are a form of expression and fully protected by the First Amendment, and therefore is unconstitutional and is prior restraint."

is used in its usual sense – a place where alcoholic beverages are sold for consumption on the premises. There being no attack upon the ordinance made on behalf of an adult cabaret, this opinion will not deal with those establishments. *Lott Investment Corp. v. Gerbing, et al.*, #33562, decided September, 1978. By the same token, the full support of alcoholic beverage control cannot be applied here as alcoholic beverages are not involved in the adult bookstore, theater and entertainment establishment businesses. See California v. LaRue, 409 U. S. 109 (93 SC 390, 34 LE2d 342) (1972).

A hearing was held in the trial court at which a vice squad officer testified as to numerous arrests of bookstore customers for solicitation for sodomy, sodomy and public indecency occurring in the adult mini motion picture theaters (peep machines) located in the rear of four bookstores. No evidence was introduced as to adult entertainment establishments or adult motion picture theaters. The trial court upheld the validity of the ordinance, the complainants appealed to the Court of Appeals, and that court transferred the case here. *Collins v. State*, 239 Ga. 400 (3) (236 SE2d 759) (1977).

Yield, Inc., with its bathhouse operations, has failed to show that it is in the business of exercising first amendment freedoms and consequently has failed to show any first amendment violation. Hence the ordinance cannot be said to be unconstitutional on first amendment grounds as to "adult entertainment establishments" as they are defined in the ordinance.

Appellants rely upon *Coleman v. Bradford*, 238 Ga. 505 (233 SE2d 764) (1977), and urge on appeal that "1) the ordinance is vague and indefinite and overbroad in its definitions, 2) operates as a prior restraint and is discriminating,

3) violates equal protection since other bookstores and theaters do not have to comply with the ordinance, 4) that the ordinance attempts to regulate materials which are protected by the First Amendment and therefore, the ordinance violates the First, Fifth and Fourteenth Amendments of the United States Constitution."

Coleman v. Bradford, supra, is not applicable here. The Chatham County ordinance there imposed a license fee of $1500 on theaters showing nonobscene, X-rated films. That was three times the $500 license fee charged other movie theaters. This court found that the ordinance in *Coleman* had as its purpose and effect the suppression of lawful speech (films). 238 Ga. at 507-509. That is not the purpose of the Atlanta ordinance as shown by this record. In fact, the license fees imposed by the City on other bookstores and theaters are not in evidence in this case. It has not been shown that the fee of $500 set by this ordinance is not a reasonable charge to cover the cost of investigating the license application and applicant.

Licensing of bookstores and movie theaters is not a per se violation of the first amendment. See Times Film Corp. v. Chicago, 365 U. S. 43 (81 SC 391, 5 LE2d 403) (1961). A city may enact an ordinance, for legitimate purposes, requiring those who would exercise their freedom of speech to obtain a license in advance. Cox v. New Hampshire, 312 U. S. 569 (61 SC 762, 85 LE 1049) (1941). In Cox, the city required a license before a parade upon the public streets and charged a fee of up to $300 for issuance of the permit. The chilling gross receipts tax upon newspapers and magazines found invalid in Grosjean v. American Press Co., 297 U. S. 233 (56 SC 444, 80 LE 660) (1936), is not involved here. The Court there emphasized that those businesses which exercise freedom of the press are not thereby immune from the ordinary forms of taxation. 297

U. S. at 250. Moreover, this fee, as heretofore noted, is not a revenue measure but is a reimbursement of the administrative expense of investigating the applicant.

Having determined that licensing of bookstores and theaters is not a per se impairment of freedom of speech and that the license fee here in issue has not been shown to be invalid, we turn to Young v. American Mini Theaters, 427 U. S. 50 (SC , LE2d) (1976). Young involved a Detroit zoning ordinance but we find that the principal differences between it and the Atlanta ordinance are in the licensing features dealt with above, so that Young is now dispositive of several issues remaining in this case.

The Detroit ordinance in Young defined adult bookstores, adult motion picture theaters, and adult mini motion picture theaters in essentially the same terms as have been adopted by Atlanta.[4] The Young case involved only adult theaters but the Court there held that a zoning ordinance regulating the location of "adult motion picture theaters" and treating them differently from other motion picture theaters, did not violate the first amendment or the equal protection clause. The Court held that even though a city could not suppress adult films, it could place them in a different classification from other films and regulate them. Thus, the City of Atlanta is not prohibited by freedom of speech or equal protection considerations from classifying adult bookstores, adult motion

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[4] The definition of adult mini motion picture theaters in the Atlanta ordinance is more specific than in the Detroit ordinance in that the Atlanta ordinance expressly includes coin operated motion picture machines.

picture theaters, and adult entertainment establishments differently from other bookstores, theaters and places of entertainment, and thereafter regulating them.[5]

The Court in Young dealt with another issue present here. There the theaters complained that the definition of "adult motion picture theater" was impermissibly vague in defining such theaters as presenting material "characterized by an emphasis" on sexual matter. The Court found that the theaters in question recognized that they were within the definition and hence they were not left in doubt by the alleged vagueness. 427 U. S. at 58-59. Similarly, the bookstore complainants here have alleged that the ordinance is applicable to them. They thus will not be heard to complain that others may not have "a substantial or significant portion" of their stock in trade in sexual books and magazines. Moreover, it would appear that even if these complainants did not qualify as "adult bookstores", those which operate peep shows would be required to secure licenses as "adult mini motion picture theatres". "It is clear, therefore, that any element of vagueness in these ordinances has not affected these respondents. To the extent that their challenge is predicated on inadequate notice resulting in a denial of procedural due process under the Fourteenth Amendment, it must be rejected." Young, supra, 427 U. S. at 59.

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[5] To the extent that Young v. American Mini Theatres, supra, permits territorial regulation of adult movies and bookstores, *Sanders v. State of Georgia*, 231 Ga. 608 (II) (203 SE2d 153) (1974), will not be followed.

Appellants cite Niemotko v. Maryland, 340 U. S. 268 (71 SC 325, 95 LE 267) (1951), and Interstate Circuit, Inc. v. City of Dallas, 390 U. S. 676 (88 SC 1298, 20 LE2d 225) (1968), for the proposition that a licensing ordinance applicable to a business engaged in activity protected by the first amendment, which does not set forth the standards on which the license shall be denied, is unconstitutionally vague. The ordinance under consideration here is not devoid of the required standards. The cases of Perrine v. Municipal Ct. East L. A. Jud. Dist. of L. A. Co., 97 CalRptr 320, 488 P2d 648 (1971) cert. denied, 404 U. S. 1038 (1972); and Talk of the Town Bookstore v. City of Las Vegas, 553 P2d 959 (Nev. 1976), are thus not applicable here.

Appellants contend that the 5 year ban on persons convicted of crimes discriminates between adult bookstores and theaters on the one hand and regular bookstores and theaters on the other hand. The City interprets its ordinance to mean that in order for a person to be subject to the 5 year ban, the felony or misdemeanor must be one "relating to sexual offenses", or alcohol or drug offenses. That is, a felony or misdemeanor not related to a sexual offense, etc., would not be disqualifying. As thus interpreted, the disqualification is an exercise of the police power and is not otherwise unreasonable. Legislation which defines the qualifications for one who engages in an occupation or profession affecting the public health, safety, morals or welfare is a proper exercise of the police power. See Hawker v. New York, 170 U. S. 189, 192-193 (18 SC 573, 42 LE 1002) (1898). The City introduced evidence in justification of the ban in connection with bookstores operating adult mini motion picture theaters. The legitimate purpose of the ban in conjunction with adult entertainment establishments would appear to be self evident. We

do not here decide the validity of the ban as to adult bookstores operate without peep shows because the only individual involved in this litigation who allegedly has a felony conviction has not shown the nature of that conviction and has not shown that he is engaged in operating a bookstore without a peep show. Miller v. Carter, 547 F2d 1314 (7th Cir. 1977), affirmed by an equally divided court, _____ U. S. _____ (98 SC 786, LE2d) (1978), is inapposite here.

The reporting and disclosure requirements of the ordinance are the means of gathering the data necessary to investigate the applicant and detect violations of the ordinance; thus, they are not invalid. Buckley v. Valeo, 424 U. S. 1, 67-68 (SC , LE2d) (1976). If the ordinance includes any unnecessary disclosure requirements, they have not been identified and urged here as such by appellants.

The ordinance does not prohibit the sale of any book, magazine or other printed matter. It does not prohibit any form of speech or expression. It licenses those who would offer certain types of sexual performances, movies and books which partake more of sexuality than of communication. See California v. LaRue, supra, 409 U. S. at 118. We do not find the ordinance invalid for any reason assigned.

Judgment affirmed. All the Justices concur.

APPENDIX B

CLERK'S OFFICE, Supreme Court of Georgia

ATLANTA 9/26/78

DEAR SIR:

The Motion for a rehearing was denied today:
Case No. 33792, Airport Book Store, Inc., et al. v. Jackson et al.

Hall, J., dissents

Yours very truly,

MRS. JOLINE B. WILLIAMS, Clerk

APPENDIX C

NO. A-558

GATEWAY BOOKS, INC., ET AL.,
Petitioners,

v.

MAYNARD JACKSON, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioners(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including February 23, 1979.

/s/ _____
Lewis F. Powell, Jr.
Associate Justice of the Supreme Court of the United States

Dated this 18
day of December, 1978.

APPENDIX D

Constitutional and Statutory Provisions

1. The pertinent provisions of the First Amendment are:

   "Congress shall make no law . . . abridging the freedom of speech, or the press or the right of the people peaceably to assemble . . ."

2. The pertinent provisions of the Fourth Amendment are:

   "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

3. The pertinent provisions of the Fifth Amendment are:

   "No person shall . . . be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . . ."

4. The pertinent provisions of the Fourteenth Amendment are:

   "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction in the equal protection of the laws."

APPENDIX E

CITY HALL
ATLANTA, GEORGIA

ORDINANCE

BY PUBLIC SAFETY COMMITTEE

AN ORDINANCE TO REQUIRE A PRIVILEGED LICENSE BEFORE DOING BUSINESS AS AN ADULT ENTERTAINMENT ESTABLISHMENT TO DEFINE ADULT ENTERTAINMENT; TO SET FORTH REQUIREMENTS FOR OBTAINING A PERMIT; TO PROVIDE A MECHANISM FOR REVOCATION OF THE PERMIT; TO REQUIRE EMPLOYEE PERMITS; TO REPEAL CONFLICTING ORDINANCES AND PARTS OF ORDINANCES, AND FOR OTHER PURPOSES.

BE AND IT IS HEREBY ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA as follows:

Section 1. PURPOSE

This article has been enacted for the purpose of: 1) promoting the health and general welfare of the City of Atlanta; 2) preserving the quality of urban life in residential and business areas of the community; 3) providing clear and definite standards for the licensing of, and the operation of, adult entertainment establishments within the City of Atlanta; 4) promoting desirable living conditions and sustaining the

stability of neighborhood and property values, and 5) preventing the use of adult entertainment establishments for unlawful purposes.

Section 2. DEFINITIONS

For the purpose of this article, the following definitions shall apply:

(1) *ADULT ENTERTAINMENT ESTABLISHMENT* – any building or structure which contains, or is used for commercial entertainment whether a place where musical entertainment is carried out consisting of a series of unrelated episodes and dances, all with the purpose of depicting or suggesting sex-centered subjects or objects or a place where the patron is charged a fee to dance or view a series of dance routines, strip performances or other gyrational choreography provided by the establishment that depicts or suggests sex-centered subjects or objects. Nothing herein defined shall in any way or form legitimize any activity prohibited by State law or City Ordinance.

(2) *ADULT BOOK STORE* – an establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to nudity or sexual conduct. As used within this section "nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the depiction of covered male genitals in a discernibly turgid state, and "sexual conduct" means acts of masturbation, homosexuality, sodomy, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be female, breast.

(3) *ADULT MOTION PICTURE THEATRE* – an enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "nudity" and "sexual conduct," as heretofore defined under this chapter, for observation by patrons therein.

(4) *ADULT MINI MOTION PICTURE THEATRE* – an enclosed building with a capacity for less than 50 persons, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to nudity or sexual conduct. As used within this section "nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering or the depiction of covered male genitals in a discernibly turgid state, and "sexual conduct" means acts of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be female, breast, or an enclosure wherein coin or slug-operated, or electrically, electronically or mechanically controlled adult amusement machines are maintained or where mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to depict nudity or sexual conduct, as heretofore defined.

(5) *ADULT CABARET* – a cabaret which features go-go dancers, exotic dancers, strip dancers or other similar entertainers, dancers or employers.

Section 3. LICENSE REQUIRED

It shall be unlawful for any person to operate an adult entertainment establishment, *adult bookstore, adult motion theatre, adult mini motion theatre* or *adult cabaret* without having first complied with the provisions of this chapter, including the obtaining of a license for the operation of an adult entertainment establishment.

Section 4. OBTAINING THE LICENSE

(a) All persons, partnerships or corporations desiring to obtain a license to operate an adult entertainment establishment, adult bookstore, adult motion theatre, adult mini motion theatre or adult cabaret, under this chapter shall make written application to the Bureau of Police Services of the City of Atlanta upon forms prepared and approved by the Mayor. Each applicant shall submit the following information and certificates:

(1) The name and address of the applicant.

(2) The location of the proposed adult entertainment establishment.

(3) The nature and character of the business.

(4) If a partnership, the names of the partnership and the names and addresses of the partners, to include all general and limited partners.

(5) If a corporation, the name of the corporation and the names and addresses of the officers and board of directors, and the names and addresses of all stockholders.

(6) Any bank accounts listed in the name of the applicant, or maintained by or for the use of the applicant, whether an individual, partnership or corporation.

(7) Whether the applicant, or any partners, or any corporation officers or board members, or any principal shareholders, have, within the preceding five (5) years, a record for any conviction for the violation of any statute of the several states, or of the United States, or of any ordinance of any city of the U. S. The term "convicted" herein shall include any adjudication of guilt, a plea of guilty, a plea of nolo contendere, or the forfeiture of a bond when charged with a bond.

(8) A listing of all real property which the applicant, partnership or corporation is presently leasing and the names of all lessees and lessors of said property.

(9) The applicant must furnish certified financial statements prepared by a certified public accountant consisting of an income statement (profit and loss statement), a balance sheet and a statement of sources and application of funds. Such financial statements should cover a period for the fiscal year ended prior to the date of submission of the application and the intervening period from the close of the

prior fiscal year through the month next succeeding the date the application is submitted to the Bureau of Police Services.

(10) If such applicant be a corporation, the addresses and state of incorporation of such corporation, as well as the names and addresses of the agents and employees of such corporation for a period of two years immediately prior to the filing of such application.

(11) Documentation of oral agreements and copies of all written agreements among any persons of partnerships applying for licenses to engage in adult entertainment, which agreements reflect or control ownership or division of profits, sharing of revenues or payment of rents or which agreements reflect any other arrangements in connection with ownership, rents, profit sharing or income application of use.

(12) And any further information that may be required by the Bureau of Police Services, or the License Review Board.

(b) All applicants shall be investigated by the Bureau of Police Services and the Bureau's findings shall be presented to the License Review Board at a public hearing on the application. The License Review Board shall recommend to the Mayor who shall approve or deny the application.

Section 5. GROUNDS FOR NON-ISSUANCE

(a) No license or renewal license for the operation of an adult entertainment establishment shall be issued to any person, partnership or corporation where any individual, having an interest either as owner, partner, officer, or principal shareholder, directly beneficial or absolute, shall have been convicted within five (5) years immediately prior to the filing of said application for any felony or misdemeanor of any state or of the United States or any municipal ordinance involving a crime of moral turpitude or relating to sexual offenses and related matters, to alcohol or drug offenses and related matters, or to gambling offenses and related matters.

(b) No license shall be issued under this chapter if the application contains a material omission, untrue or misleading information, or if the application fails to indicate the true and complete ownership of the proposed establishment.

(c) No license shall be issued under this chapter if the proposed premises do not comply with the zoning ordinances, the fire code or the building code of the City of Atlanta.

(d) No license shall issue under this chapter if the applicant has had any license issued under the police powers of the city previously suspended or revoked; provided, however, the License Review Board may waive the prohibition of this section if a period of two (2) years has passed since any prior revocation of any license held by the applicant.

Section 6. INVESTIGATION OF APPLICATION; FEE

All applications required by this chapter shall be investigated by the Bureau of Police Services and a recommendation shall be made to the License Review Board within twenty-five (25) days of the filing of the application. An investigation fee of Five Hundred ($500.00) Dollars for each application for a license required herein shall be paid to the Bureau of Police Services at the time of filing said application.

Section 7. ANNUAL LICENSE RENEWAL; FEES

Licenses to operate an adult entertainment establishment shall be renewed annually as of the date of the original issuance of the license. All applicants for renewal licenses shall furnish all data, information and records requested by the License Review Board or the Bureau of Police Services. There shall be an initial and annual registration charge for the original issuance and renewal of each license issued pursuant to this article. The Mayor shall have the authority to renew the permit. His decision may be appealed to the License Review Board for a hearing and recommendation to the Mayor for final action.

Section 8. MINORS PROHIBITED

No license of an adult entertainment establishment shall allow any person who is a minor to frequent said establishment.

Section 9. REVOCATION OF LICENSE; HEARING

Any license issued hereunder shall be subject to revocation for cause. The violation of any of the prohibition of the ordinance, or the. . . .

Section 13. EMPLOYEES TO BE FINGERPRINTED

No person shall be granted an employee permit until such person has been fingerprinted by the Bureau of Police Services.

Section 14. MINIMUM AGE OF EMPLOYERS

No licensee hereunder shall employ any person unless such person is eighteen (18) years of age or older.

Section 15. GROUNDS FOR NON-ISSUEANCE OR REVOCATION OF EMPLOYEE PERMIT

(a) No person shall be issued any employee permit who has, within five (5) years of the date of proposed employment, been convicted of any felony, misdemeanor or ordinance violation involving sex related, alcohol related or drug related offenses.

(b) The Commissioner of Public Safety shall have the authority to revoke an employee permit. The permit holder shall have the right to appeal the revocation to the License Review Board. After receiving the recommendation of the License Review Board, the Mayor may revoke or grant the permit.

Section 16. EXISTING ESTABLISHMENTS

All existing adult entertainment establishments shall come into compliance with the terms of this ordinance within six (6) months of its adoption.

Section 17. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconsitutional.

Section 18. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

ADOPTED by City Council Jan. 17, 1977
APPROVED by the Mayor Jan. 24, 1977

A true copy

/s/_____
Jessy C. Rurden
Deputy Clerk of Council

APPENDIX F

PERSONAL HISTORY RECORD

ATLANTA BUREAU OF POLICE SERVICES — **SPECIAL INVESTIGATOR'S OFFICE**

Name in FULL (Please Print) _____ Date _____

Address _____ Telephone _____

Place of Birth _____ (City – State) _____ Date of Birth _____ (Day–Month–Year) _____ Age _____

Race _____ Height _____ Weight _____ Color Eyes _____ Color Hair _____

Drivers or Chauffeurs License Number _____ State _____

Have you been convicted for violation of a Federal Law? _____ State Law? _____

City Ordinance? _____ If so, for what? _____

Give addresses for past FIVE years _____

_____

_____

List names and addresses of employers for past THREE years _____

_____

_____

Married? _____ Husband or wife's name _____

Fingerprinted by: _____ Applicant's Signature _____

Date _____

FORM 32-17

DO NOT FOLD THIS CARD

APPENDIX G

PERMITS
FINANCIAL STATEMENT FOR A CORPORATION

Name _____ To _____

Address _____ _____

Character of Business _____

Condition at Close of Business _____ 19

For the purpose of obtaining credit with you from time to time, the undersigned makes the following financial statement as of the date above indicated, and hereby agrees to notify you promptly of any change adversely affecting the financial condition herein reflected.

BALANCE SHEET

ASSETS

Cash	$_____
Notes Receivable-Discounted (A)	
Notes Receivable - Not Discounted (A)	
Accounts Receivable - Current (A)	
Merchandise (Net) - (B)	
U.S. Government Securities	
TOTAL CURRENT ASSETS	$_____
Real Estate and Building (E)	
Machinery, Fixtures and Equipment (E)	
Investments in Affiliates and Subsidiaries (D)	

Other Stocks and Bonds (C)
Due from Affiliates (D)
Due from Officers, Employees, Stockholders
Deferred Receivables (A)
Cash Value Life Insurance (F)
Prepaid Expenses and Deferred Charges

TOTAL ASSETS $

LIABILITIES

Notes Payable to Banks $
Notes Receivable Discounted
Other Notes Payable
Current Mortgages and Bonds
Accounts Payable for Merchandise
Due to Affiliates (D)
Other Current Liabilities

TOTAL LIABILITIES $
Deferred Liabilities
TOTAL LIABILITIES $

Capital Stock Preferred
- Common
Surplus
TOTAL LIABILITIES & CAPITAL $

PROFIT AND LOSS STATEMENT

NET SALES $
Less - Cost of Goods Sold:
Beginning Inventory
Add Purchases
If (Labor
Manufacturer (Mfg. Expenses
Add

Total
Less - Closing Inventory
Total Cost of Goods Sold
GROSS PROFIT $
Less - selling Expense
General and Administrative
Reserves (Excl. Fed. Taxes)

Total Operating Expenses $
NET OPERATING PROFIT
Add - Other Income

Total Other Income $

Less - Other Expenses
Total Other Expenses $

Less - Provision for Federal Taxes
NET PROFIT $

Included Above - Depreciation Charges
Executive Remuneration

SURPLUS RECONCILIATION

Beginning Balance $
Add-Profit

Less - Dividents

Adjustments
Closing Balance $

AMOUNT OF CONTINGENT LIAB. (G)
AMOUNT OF ASSETS PLEDGED
AMOUNT OF LIABILITIES SECURED

(A) TRADE RECEIVABLES - Selling Terms_____days

Current: Account-Not due	$
Notes-Not due, but maturing within six months	
TOTAL CURRENT	$
Deferred: Accounts-Past due	$
Notes-Past due or maturing in over six months	
Unclassified notes and accounts	
Less-Reserve for bad debts	
TOTAL DEFERRED-NET	$
Charge-offs in period	
Recoveries in period	

(B) INVENTORY - Purchase Terms_____days

Finished Goods	
Work in Process	
Raw Materials	
Supplies	
Supplies	
Out on Consignment	
Miscellaneous	
GROSS INVENTORY	
Less-Reserve	
NET INVENTORY	
Purchase Commitments	
% of Discounts Earned on Purchases	
% of Returns & Allow on Gross Sales	
Basis of inventory pricing?	
Was physical count taken?	

(C) STOCKS AND BONDS	UNITS	MKT. VAL.	TOTAL
Total			

(D) AFFL.-SUBID.	% Owned	Invest.	Due From	Due To
Totals				

(E) FIXED ASSETS	Title in Whose Name	Appraisal Value	Res. for Dep.	Net Val.	Mortgage	Yr. Due

(F) LIFE INSURANCE (M indicates thousands of dollars):

Insured Company	Face Val.	Cash Val.	Loan	Beneficiary	Type	Mdse.	Plant
	M	M	M		Fire	M	M
	M	M	M		Wind	M	M
	M	M	M		Burg	M	M
	M	M	M			M	M

(G) CONTINGENT LIABILITIES:

Nature	Amount $
Nature	Amount $
Nature	Amount $

(H) OWNERSHIP OF BUSINESS:

Name	Title	No. Shares or % owned	Remuneration	Outside Worth

(I) LIST OF SECURED OBLIGATIONS: _____

Nature of Obligation | How Secured | On What | Rate of Interest

When Due | Retired to Date | Outstanding

_____

Incorporation in _____ Date _____ Shares Authorized _____
Outstanding Par Value $____; Last independent audit by _____
or more a composition settlement with creditors? _____

I, _____, being duly sworn according to law, do swear that the facts and things stated by me in the above and foregoing answers to questions are true, and no false, or fraudulent statement is made herein and such answers were made in order to procure the granting of such a license.

_____ _____

Date Signature

APPENDIX H

_____

CITY OF ATLANTA
BUREAU OF POLICE
SERVICES

FOR THE YEAR ____
DATE _____

APPLICATION FOR A LICENSE TO OPERATE AN ADULT ENTERTAINMENT ESTABLISHMENT

Indicate by ("X") type of establishment:

Adult Bookstore ____ Adult Motion Picture Theater ____
Adult Mini Picture Theater ____ Adult Cabaret ____
Other (Be specific) _____

1. Applicant's legal name in full _____

2. Applicant's address _____
City and State

3. (a) Legal name of business _____
(b) Trade Name _____

4. (a) Location _____ (b) Phone _____

5. The nature and character of the business (Specify Activities) _____
_____

6. If a partnership, list the partnership and the names and addresses of the partners, to include all general and limited partners.
_____
_____
_____

7. If a corporation, list the name of the corporation and the names and addresses of the officers and board of directors, and the names and addresses of all stockholders.

_____

_____

_____

8. List any bank accounts in the name of the applicant, or maintained by or for the use of the applicant, whether an individual or partnership or corporation.

_____

_____

_____

9. Whether the applicant, or any partners of any corporation officers or board members, or any principal shareholders, have within the preceeding (5) five years, a record for any conviction for the violation of any statue of the several states, or of the United States, or of any ordinane of any city of the U.S. Underline yes or no. If yes explain:

_____

_____

10. List all real property which the applicant, partnership or corporation is presently leasing and the name of all leases and leasors of said property. _____

_____

11. (a) The applicant must include certified financial statements prepared by a certified public accountant consisting of an income statement (profit and loss statement), a balance sheet and a statement of sources and application of funds. Such financial statements should cover a period for the past financial year ending before the date of submission of the application and between the period from the close of the previous financial year through the month next following the date the application is given to the Bureau of Police Services.

(b) Also, if the applicant represents a corporation, the addresses and state of incorporation of such corporation, as well as the names and addresses of the agents and employees of such corporation for a period of two years immediately prior to the filing of such application.

(c) Documentation or oral agreements and copies of all written agreements among any persons or stockholders of corporation or partners of partnership applying for licenses to engage in adult entertainment, which agreements reflect or control ownership or division of profits, sharing of revenues or payment of rents, or which agreements reflect any other arrangements in connection with ownership, rents, profit sharing or income application of use.

(d) And any further information that may be required by the Bureau of Police Services, or the License Review Board.

I, _____, being duly sworn according to law, do swear that the facts and things stated by me in the above foregoing answers to questions are true, and no false, or fraudulent statement is made herein and such answers were made in order to produce the granting of such a license.

_____

Signature of Applicant

Sworn to and subscribe
before me this _____ day of _____ 19 __

_____

Notary Public

_____

Signature and title
of person other than
applicant filling out
this application.

_____

Telephone Number

ALL QUESTIONS MUST BE ANSWERED

Below to be filled out by Police Investigator -
DATE RECEIVED _____
NO. _____

APPENDIX I

MAYNARD JACKSON, MAYOR
BUREAU OF POLICE SERVICES
175 Decatur St., S. E.
Atlanta, Georgia 30303

May 25, 1977

Dear Sir:

Enclosed you will find copies of various forms that *must* be completed and submitted to the License and Permits Section of the Bureau of Police Services on or before the 25th day of June 1977. Also, you will be required to pay an investigative fee of $ 500.00 for each application that you file.

Additionally, you are *required* to have each employee working in your establishment to obtain an adult entertainers permit to work in your business. Employees may obtain permits only if and when you are approved by the City to do business. The new law is very clear and concise, and Section 16 of the enclosed copy of this new Adult Entertainment Ordinance clearly states that "all existing adult entertainment establishments shall come into compliance with the terms of this ordinance within six (6) months of its adoption."

All adult entertainment establishments must submit applications in ample time to be investigated and approved by the License Review Board and by the Mayor prior to the compliance date of July 24th 1977, all others will be considered in violation of the ordinance and dealt with accordingly.

You may direct any questions you may have to me, Captain V. Worthy, License and Permits Section, 668-6620.

Respectfully,

/s/ V. Worthy
Captain V. Worthy
License and Permits
Section
Bureau of Police Services

VS:eh
Encl.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1313

GATEWAY BOOKS, INC., MOD BOOKS, INC., DIXIE BOOKS, INC., PAPERBACK BOOKMART, U.B. INC., 45 8TH STREET CORPORATION, CARL SNYDER, JOE MANNING, JOHN MARTIN, MARK MASON, and AIRPORT BOOK STORE, INC.,
Petitioners,

v.

MAYNARD JACKSON, in his capacity as Mayor and BOB HAMER, Bureau Director of the Licensing Division, and LEE P. BROWN, in his capacity as Public Safety Commissioner of The City of Atlanta,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE GEORGIA SUPREME COURT

W. ROY MAYS, III
2000 Fulton National
Bank Building
Atlanta, Georgia 30303
(404) 658-1150

Attorney for Respondents

OF COUNSEL:

FERRIN Y. MATHEWS
MALCOLM J. HALL
GARY S. WALKER
2000 Fulton National
Bank Building
Atlanta, Georgia 30303
(404) 658-1150

INDEX

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES

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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE GEORGIA SUPREME COURT

Respondents respectfully pray that a writ of certiorari does not issue to review the opinion and judgment of the Supreme Court of Georgia entered in the above-styled action on September 6, 1978.

REASONS FOR DENYING THE WRIT

I.

THE CITY OF ATLANTA ADULT ENTERTAINMENT ESTABLISHMENT LICENSE ORDINANCE IS NOT VIOLATIVE OF THE FIRST, FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION BY REQUIRING A LICENSE TO ENGAGE IN THE OPERATION OF AN ADULT ENTERTAINMENT ESTABLISHMENT.

Licensing of bookstores and movie theaters is not a per se violation of the United States Constitution as Petitioners would seem to suggest in the brief submitted in support of their petition for writ of certiorari. See Times Film Corp. v. Chicago, 365 U.S. 43 (1961). A municipality may enact an ordinance, for legitimate purposes, requiring those who would exercise their freedom of speech to obtain a license in advance. Cox v. New Hampshire, 312 U.S. 569 (1941).

Petitioners proffered the contention in the State Court that the issues involved in the instant case are controlled by the case of Coleman v. Bradford, 238 Ga. 505 (1977). Petitioners again have offered the Coleman case as supportive of their arguments and cite Coleman on pages 17 and 18 of their brief.

In Coleman, the Chatham County, Georgia Commissioners appealed an order of the Chatham County Superior Court which held unconstitutional a county ordinance adopted to license and regulate adult entertainment establishments in the unincorporated area of the county. Showboat Cinema, Appellee in Coleman, applied for and obtained a general theater license after paying the required $500.00 license fee. After a police investigation it was discovered that Appellee, on a weekly basis, exhibited either X-rated films or films depicting nudity or sexual conduct. After hearing, the Appellants concluded that Appellee was an adult theater and should be licensed under the "Adult Entertainment Establishment" Ordinance. The trial court enjoined the enforcement of the adult movie provision of the ordinance and also found the ordinance unconstitutional as it pertained to adult movie theaters. The trial court specifically found §2(e) of the ordinance to be invalid. That section provided as follows:

> "§2(e). Adult movie houses, which on a regular, continuing basis show nonobscene films rated X by the Motion Picture Coding Association of America, or any movie theater which presents for public viewing on a regular and continuing basis so called "adult films" depicting nudity or sexual conduct, shall pay an annual license fee of $1,500.00."

The Georgia Supreme Court noted, at the outset of its discussion in Coleman that,

> ". . . this ordinance is not intended to regulate or control the dissemination of obscene materials. Rather, by its terms, it deals specifically and exclusively with films that are not obscene. Thus, this ordinance is an attempt to regulate materials which are a form of expression fully protected by the First Amendment." Coleman, pp. 506, 507.

The Georgia Supreme Court reasoned that since the Chatham County ordinance dealt specifically with nonobscene films, the films, though possibly in bad taste, were constitutionally protected and the ordinance "imposed an invalid prior restraint on the freedom of speech and is a violation of the equal protection clause." Coleman, p. 507.

The Court addressed the question of equal protection in light of the trial court's determination that the ordinance treated adult movie theaters differently from other theaters showing nonobscene movies solely because of the content of the film presented. The Court noted, however, that classifications may be imposed stating:

> "Under the close scrutiny test, the government imposing the classification bears a heavy burden. It must

> show that the classification is in furtherance of a compelling state interest and that any discrimination incidental to the classification is no greater than that essential to the compelling state interest." Coleman, pp. 509, 510.

The Court noted that the Appellants generally asserted interest to protect the "public health, safety and morality", was not enough to meet the Appellants' burden of showing a furtherance of a compelling state interest. Coleman, p. 510.

In the case at bar, the decision of which is presently cited as Airport Book Store, Inc., et al. v. Jackson, et al., 242 Ga. 214 (1978), the Court specifically found that Coleman was not applicable to the facts which were presently before it. Airport Book Store, pp. 219, 220. The Court further found that the subject ordinance was not devoid of the required constitutional standards setting forth the grounds on which the license shall be granted or denied, Airport Book Store, p. 222, and thusly found that cases such as Interstate Circuit, Inc. v. City of Dallas, 390 U.S. 676 (1968), wherein the ordinance there contained no such standards, did not apply.

The Respondents have not designed an ordinance which specifically seeks to regulate or prohibit nonobscene materials, nor have the Respondents sought to suppress the access or availability of such materials, nor have they sought to reach

such a result. The Respondents have designed and implemented an ordinance whereby they do not seek to inhibit free speech, but rather to protect a legitimate governmental concern, that of regulating and seeking to prevent criminal activity which, the record in the instant case shows, pervade and habitually occur within the confines of such establishments.

The Georgia Supreme Court noted the criminal activity in its decision stating:

> "A hearing was held in the trial court at which a vice officer testified as to numerous arrests of bookstore customers for solicitation of sodomy, sodomy and public indecency occurring in the adult mini station picture theaters (peep machines) located in the rear of four bookstores." Airport Book Store, p. 219.

It is well settled that the government can tailor its reaction to different types of speech according to the degree to which its special and overriding interests are implicated. Young, et al. v. American Mini Theaters, Inc., et al., 427 U.S. 50 (1976); Greer v. Spock, 424 U.S. 828 (1976); California v. La Rue, 409 U.S. 109 (1972); Tinker v. Des Moines School District, 393 U.S. 503 (1969); United States v. O'Brien, 391 U.S. 367 (1968); Richter v. Dept. of Alcoholic Beverage Control of the State of California, 559 F. 2d 1168 (9th Cir. 1977).

In O'Brien, supra, this Court held that a governmental regulation is sufficiently justified, despite its incidental impact upon First Amendment interests

> "if it is within the constitutional power of the government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." O'Brien, p. 377.

There is no question that the subject ordinance is within the police power of the City Council of the City of Atlanta to enact. The interest of a municipality to prevent and regulate crime is a fundamentally legitimate concern deeply rooted in American society. See Berman v. Parker, 348 U.S. 26 (1954).

The City of Atlanta's Adult Entertainment Establishment License Ordinance does not work to close any establishments such as petitioners, nor does it restrict access by the public to petitioners' materials. The ordinance merely provides a vehicle for the regulation of criminal activity, such activity shown to habitually occur within the confines of establishments.

The Respondents, most assuredly, have a compelling interest in containing and preventing the criminal activity shown by the record to exist. Moreover, the subject ordinance, in Section 1, specifically states for its purpose, among other things that of ". . . preventing the use of adult entertainment establishments for unlawful purposes."

In the case of John McDaniel, d/b/a Union Station Books v. Maynard Jackson, et al., CA 78-1282A, U.S.D.C., N.D. Georgia, (1979), Atlanta Division, the plaintiffs sought to declare the subject ordinance unconstitutional on essentially the same grounds as the instant Petitioners. Nevertheless, this federal district court concluded, inter alia, as a matter of law, that:

> "As a result of criminal activities such as sodomy and public indecency occurring in adult book stores, the City of Atlanta has a compelling interest in regulating these establishments and under such circumstances may license them." At page 7 of the opinion.

For the foregoing reasons, the City of Atlanta Adult Entertainment Establishment License Ordinance is constitutional and the petition for writ of certiorari should be denied.

II.

THE LICENSING REQUIREMENTS AND PROCEDURES OF THE CITY OF ATLANTA ADULT ENTERTAINMENT ESTABLISHMENT LICENSE ORDINANCE ARE NOT VIOLATIVE OF THE FIRST, FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

Petitioners have seemingly contended by their brief that the five year ban on persons convicted of crimes violates equal protection as between adult bookstores and theaters on the one hand and "regular" bookstores and theaters on the other hand. However, for a person to be subject to the five year ban, the crime must be one relating to sexual offenses, or alcohol or drug offenses. The ban is an exercise of the police power and is reasonable. Legislation which defines the qualification for one who engages in an occupation or profession affecting the public health, safety, morals or welfare is a proper exercise of the police power. DeVeau v. Braisted, 363 U.S. 144 (1960); Hawker v. New York, 170 U.S. 189 (1898).

There is no issue that the subject ordinance does not permanently bar anyone from employment in an adult entertainment establishment. While the ban is an exercise of the police power and may permanently bar employment, see Hawker, supra, the ordinance merely places a five year ban on those convicted of certain offenses, as a safeguard in furtherance of the City's compelling interest in preventing crime within such businesses.

The reporting and disclosure requirements of the subject ordinance attached by the Petitioner, are the means of gathering the data necessary to investigate the applicant and detect violations of the ordinance. Such disclosure requirements are not violative of the constitution. Buckley v. Valeo, 424 U.S. 1 (1976).

Respondents have attempted to assure that the persons who operate the subject establishments and those who are employed therein, by their action or inaction, do not allow criminal activity of the kind which is the subject of the instant ordinance. It is a matter of logic that since the public authority, under its police power, has the right and indeed the duty to investigate those wishing to obtain licenses, and to charge a fee to defray administrative costs, Clyde Mallory Lines v. Alabama, 296 U.S. 261 (1935); Chemline, Inc. v. City of Grand Prarie, 364 F. 2d 721 (5th Cir. 1966), it must require background information in order to reach an informative and knowledgeable determination.

The disclosure of financial records, as required by the ordinance, aids in the prevention of subterfuges, such as one applicant securing a license when in fact he acts only as a straw-man or front for another person who may not otherwise be legally entitled to receive such a license.

Petitioners have proffered the contention that by imposing upon adult entertainment establishments certain licensing requirements not imposed on other businesses the ordinance is rendered unconstitutional under the case of Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975). However, there is no issue that the government may effect classifications in furtherance of a compelling state interest. Young, et al. v. American Mini Theaters, Inc., et al., 427 U.S. 50 (1976); United States v. O'Brien, 391 U.S. 367 (1968). In the case at bar, and unlike the cases cited by Petitioners in their brief, the Respondents have established a compelling state interest and have implemented an ordinance, constitutional in all respects, to further that interest.

CONCLUSION

For the foregoing reasons, a writ of certiorari should not issue to review the judgment and opinion of the Georgia Supreme Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that before filing the foregoing Brief I served the same upon:

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by this day mailing a copy of said Brief with proper postage affixed thereto.

This 17th day of April, 1979.

Gary S. Walker